

## **CHAPTER 16 Zoning**

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### **Sec. 16-1. Title.**

This Chapter shall be known and may be cited as "The Town of Buena Vista Zoning Code," or simply, "The Zoning Code."

(Prior code 17.01.010; Ord. 11-2001 §1)

### **Sec. 16-2. Authority and application.**

This Chapter has been adopted pursuant to the authority vested in the Town under Article 23, Part 3, of Title 31, C.R.S., and is intended to promote and protect the health, safety and welfare of the citizens and territory of the Town. The provisions of this Chapter shall apply to all land within the Town and shall be liberally construed in order to implement and serve the purposes and goals set forth herein. Unless specifically exempted from its terms, all regulations contained in this Chapter shall apply to the lands and activities of all governmental agencies, whether federal, state, county or municipal, to the extent permitted by law.

(Ord. 11-2001 §1)

### **Sec. 16-3. Enforcement and penalties.**

- (a) It shall be unlawful for any person, including an owner, occupant, builder or agent, to develop or use, or to attempt to develop or use, any real property in violation of the provisions of this Chapter, and violations of this Chapter shall be punishable upon conviction for each separate offense by a fine or imprisonment, or both, as set forth in Article IV of Chapter 1 of this Code.
- (b) No building permit, water system connection permit, access permit or other permit shall be issued for any building, development, structure, lot or parcel created, used, sold or conveyed in violation of this Chapter.
- (c) All persons are presumed to know the terms and requirements of this Chapter and the extent of the legal authority of the Town and its employees, boards and commissions to issue zoning approvals or permits. Any permit or approval issued in error, or otherwise not in conformity with the requirements of this Chapter, shall be void. Similarly, any permit or approval issued in reliance upon or as a result of a materially false statement or representation made in the process of obtaining a permit or development approval shall, likewise, be void. Any person having received a void or voidable permit

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or approval shall not be relieved from having to comply with all applicable terms and conditions of the Chapter, and the Town shall not be estopped from fully enforcing same.

(Ord. 11-2001 §1)

#### **Sec. 16-4. Definitions.**

As used in this Chapter, the following terms shall have the meanings provided below:

Accessory dwelling unit (ADU) means an attached or detached dwelling unit that is accessory and subordinate in size and character to a principal building situated on the same lot or parcel, and that otherwise satisfies the requirements contained in this Chapter.

Alley means a minor public thoroughfare set aside or dedicated for vehicular traffic, or entering or going through a city block and generally used for service purposes.

Antique vehicle means a motor vehicle valued principally for its early date of manufacture or historical character or design, and which if not operable is substantially intact. A junked vehicle shall not qualify as an antique vehicle.

Apartment means a room or suite of rooms in a multiple dwelling used or designed for occupancy by a single family.

Bed-and-breakfast means a portion of an owner-occupied residence made available to paying guests for short-term lodging.

Building means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or property of any kind.

Building, accessory means a detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building but not for residential purposes and located on the same lot therewith.

Building coverage means that portion of the surface of a lot or other unit of land covered, or permitted to be covered, by buildings measured on a horizontal plane from the exterior foundation walls of all buildings at ground level, and sometimes known as lot coverage or site coverage.

Building line means the line established by the vertical wall of a building facing and closest to the street providing access to the lot or land upon which the building is located.

Building, principal means a building in which is conducted the principal use of the lot on which the building is located.

Child care center means a state-licensed facility, by whatever name known, that is operated for the whole or part of a day for the care of five (5) or more children eighteen (18) years of age or younger who are not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and/or with or without stated educational purposes. The term shall not include any dwelling licensed as a foster care home by the State or other government agency, but does include, without limitation, facilities commonly known as day care centers, before- and after-school centers/homes and preschools.

Civic structure means a structure of, relating to or belonging to a city or a nonprofit organization, including schools, parks, churches, governmental buildings, etc., where the sales of goods or services are incidental in nature.

Clear sight triangle means the area at the intersection of any two (2) streets that is to be kept clear of any shrubs, groundcovers, berms, signs, structures or other materials greater than two (2) feet in height above the street centerline grade. A clear sight triangle is measured at the intersection of any two (2) streets. A triangle measuring fifteen (15) feet for alleys, fifteen (15) feet for local

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streets, thirty (30) feet for collector streets and fifty (50) feet for arterial streets along each curb or edge of roadway/pavement from their point of intersection, the third side being a diagonal line connecting the first two (2).

Clinic, office, laboratory, dental or medical means a building or group of buildings in which the primary use is the provision of health care services to patients or clients. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, massage therapy, mental health professional, physical and/or occupational therapy, related medical services, vocational training, placement service and social and recreational activities suitable for disabled adults and children or similar service, or a laboratory which provides bacteriological, biological, medical, X-ray, pathological and similar analytical or diagnostic services to doctors or dentists. No fabricating is conducted on the premises, except the custom fabrication of dentures or similar dental appliances. This definition excludes in-patient or overnight care, animal hospitals, veterinarians or other similar services.

Commercial use means a business or activity involving the sale or exchange of services, goods or commodities at retail or otherwise, and includes offices and office uses.

Common open space means a parcel of land, an area of water, or a combination of land and water, within the site designated for a planned unit development, designed and intended primarily for the use or enjoyment of residents, occupants and owners of the planned unit development. Areas included in driveways or otherwise required to move cars in or out of parking spaces shall not be considered as common open space.

Condominium means a common interest community in which portions of the real estate are designated for separate ownership (e.g., units) and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Condominium unit means an individual air-space unit together with the interest in the common elements appurtenant to such unit.

Conference rooms or centers means a room or building primarily used for assembly purposes.

Customary incidental home occupation, or simply home occupation, means a business conducted within a dwelling, or within an accessory building attached or associated with a dwelling, by a full-time resident of the dwelling, and which use is clearly incidental and secondary to the residential use of the dwelling and complies with the operational standards set forth in this Chapter; excepting what are commonly known as "garage sales" or "rummage sales" conducted on an occasional basis (not more than four (4) times per year).

Day care home means a state-licensed dwelling or residence providing less than twenty-four-hour care to groups of five (5) or more children under the age of eighteen (18) years, or five (5) or more developmentally disabled or mentally ill adults, or five (5) or more adults sixty (60) years of age or older, who are not related to the owner, operator or manager of the dwelling.

Deck means an open, unroofed platform twelve (12) inches or more above finished grade and supported on the ground, extending from a house or other building.

Dormitory means a building, oftentimes associated with an educational facility, providing housing for a number of unrelated persons utilizing common entrances and hallways, single or group sleeping accommodations and shared bath and toilet facilities.

Dwelling or dwelling unit means a building, or a portion thereof, designed and intended to be used by a person or family for private residential purposes and which has its own separate entrance and is equipped with facilities for sleeping, bathing and cooking and has permanent plumbing.

Dwelling, multifamily means a building designed and constructed to contain three (3) or more dwelling units.

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Dwelling, single-family means a detached building containing only one (1) dwelling unit.

Dwelling, two-family or duplex means a detached building designed and constructed to contain two (2) dwelling units separated by a fire-resistant common wall in a side-by-side configuration, or an over-under stacked configuration.

Equivalent performance engineering basis means that by using engineering calculations or testing, following commonly accepted engineering practices, all components and subsystems will perform to meet health, safety and functional requirements to the same extent as required for other single-family housing units.

Family means any individual, or two (2) or more persons related by blood or marriage or between whom there is a legally recognized relationship, or a group of not more than six (6) unrelated persons occupying the same dwelling unit.

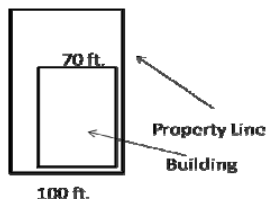
Fence means a man-made barrier constructed or installed to demarcate or create a boundary, partition or enclosure, whether solid or otherwise, and/or used to protect, confine, screen or conceal, and includes, without limitation, freestanding walls and retaining walls.

Floor area/space, gross means the sum of all horizontal floor areas within a building measured from the interior faces of the exterior building walls or from the interior faces of common walls separating buildings.

Floor area/space, net means the total floor area within the perimeter of the inside walls of the building exclusive of areas for hallways, stairs, closets, storage and restrooms.

Foster care home means a residence that is certified by the county department of human services or a child placement agency for the purpose of providing twenty-four-hour family care for one (1) or more children under the age of eighteen (18) years who are not related to the head of such home, except in the case of relative care.

Frontage buildout means the total lineal footage of the front wall of a building and planted components over fifteen (15) feet tall with a continuous canopy facing the public right-of-way, divided by the lot width.



Gasoline or filling stations means a place where gasoline and petroleum products are sold.

Height means the distance measured on a vertical plane from the average preconstruction or postconstruction grade around the perimeter of a building or structure, whichever is lower, to the highest point on the roof surface of the building or structure.

High intensity office means a room, set of rooms or building used as a place for commercial, professional or bureaucratic work, which exceeds a cumulative area of two thousand five hundred (2,500) square feet.

High intensity retail means a business engaged in sales of goods and services, which exceeds a cumulative area of two thousand five hundred (2,500) square feet.

High water use zones means areas requiring watering more than twice per week or turf grass. Edible gardens are not considered high water zones.

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Hotel or motel means an establishment that provides lodging and usually meals and other services for travelers and other paying guests.

Inoperable or wrecked means in a state of disrepair or disassembly; does not work and/or has value only for parts, salvage or junk.

Junk means, without limitation, scrap, waste material, disassembled or inoperable machinery, equipment or motor vehicles, discarded machinery or motor vehicle parts and similar materials or items.

Junked vehicle shall have the same definition as described in Section 8-41(3) of this Code.

Junkyard means any lot, land or structure used in whole or in part for the collection, storage and/or sale of waste paper, rags, scrap, used wood and nonrecyclable metal or other discarded materials, and includes the collection, storage and salvaging of inoperable machinery, equipment, vehicles (excluding antique vehicles) and vehicle parts, whether or not for sale; but excluding recycling facilities, recycling collection centers or enclosed recycling bins made available to the public for the collection of commercially recyclable glass, aluminum, metals, plastic or newspaper.

Landscape area, minimum means an area which has been improved through the planting and maintenance of living plants such as trees, shrubs, plants, vegetative groundcover, turf grasses or other natural nonliving elements such as rock, stone and bark.

Lodging unit means a room intended for occupancy by a paying guest or guests on a temporary or transient basis, usually not exceeding thirty (30) days, and where no kitchen or other food preparation facilities are provided. A lodging unit is normally part of a larger building containing two (2) or more lodging units, e.g., a motel or lodge.

Lot means one (1) of the following:

- a. A defined single unit of land created under the Town or County subdivision regulatory process as reflected on a duly approved plat recorded in the office of the County Clerk and Recorder;
- b. If created and recorded prior to adoption by the Town or County of subdivision regulations, a single unit of land designated by a separate and distinct number or letter on a plat recorded in the office of the County Clerk and Recorder;
- c. A single unit of land created and designated by number or letter on the original Town site or a Town site addition map for the Town, or on any annexation map or plat duly approved by the Town and recorded in the records of the County Clerk and Recorder;
- d. A single unit of land created and designated in one (1) of the manners described in Subparagraph a, b or c above to which, through a lot line adjustment or otherwise, additional land has been added, resulting in a single unit of land of greater size than originally indicated or described on the plat or map referred to in Subparagraph a, b or c above;
- e. If created other than by the Town or County subdivision process and not designated and identified on a recorded plat duly executed by the Town or County, a unit of land held under separate ownership conforming with the minimum lot size requirements for the applicable zone district and abutting upon at least one (1) public street or right-of-way; or
- f. A single unit of land conforming with the minimum lot size requirements for the applicable zone district that is created through the merger of nonconforming lots or tracts as provided in Section 16-125.5 of this Code.

Lot shall not mean a single unit of land created and designated in one (1) of the manners described in Subparagraph a, b or c above to which, through a lot line adjustment or otherwise, land has been removed or subtracted, resulting in a single unit of land of smaller size than originally indicated or

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described on the plat or map referred to in Subparagraph a, b or c above and that does not meet the minimum lot size requirements for the applicable zone district

Lot area means the total horizontal area within the lot lines of a lot or other parcel of land.

Lot depth means the average distance measured on a horizontal plane between the front and rear lot lines.

Lot, double-frontage means a lot having frontage on two (2) parallel or almost parallel streets.

Lot, duplex conversion means a lot resulting from the subdivision of an existing duplex and the land upon which it is located for the purpose of creating two (2) separate dwelling units and lots under separate ownership.

Lot line, front means the property line closest to and normally dividing a lot or other unit of land from the street or street right-of-way upon which the lot or land abuts, and which street or street right-of-way is used and referenced in assigning a street number or address for the subject lot or land.

Lot line, rear means the lot line opposite the front lot line, or in the case of an irregularly shaped lot, that lot line which is determined by the Town from the lot's orientation and any existing structures to be the rear lot line.

Lot line, side means the lot lines defining a lot other than the front and rear lot lines.

Lot of record means a lot which is part of a legally authorized subdivision recorded in the records of the County Clerk and Recorder, or a lot that was legally created and/or defined and illustrated on a plat, map or deed that was recorded in the records of the County Clerk and Recorder prior to the adoption by the Town or County of subdivision regulations.

Lot, reverse-corner means a corner lot which abuts three (3) streets.

Lot width means the distance between the side lot lines measured on a horizontal plane along the front yard setback line or building line, whichever is longer.

Low intensity office means a room, set of rooms or building used as a place for commercial, professional or bureaucratic work, which does not exceed a cumulative area of two thousand five hundred (2,500) square feet.

Low intensity retail means a business engaged in sales of goods and services, which does not exceed a cumulative area of two thousand five hundred (2,500) square feet.

Manufactured home means a single-family dwelling which:

- a. Is partially or entirely manufactured in a factory;
- b. Is not less than twenty-four (24) feet in width and thirty-six (36) feet in length;
- c. Is installed on an engineered permanent foundation;
- d. Has brick, wood or cosmetically equivalent exterior siding and a pitched roof; and
- e. Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," 42 U.S.C. §5401 et seq., as amended.

Mobile home (trailer) means any wheeled vehicle, exceeding either eight (8) feet in width or thirty-two (32) feet in length, excluding towing gear and bumpers, without motive power, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which may be drawn over the public highways by a motor vehicle (Section 42-1-102, C.R.S.).

Mobile home park means any premises one (1) or more acres in size used or set apart for the purpose of supplying to the public parking space for mobile homes for living or sleeping purposes,

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and which includes any buildings, structures, vehicles or enclosure used or intended for use as part of such mobile home park (includes trailer coaches).

Mobile home site means a plot of ground within a mobile home park designated for the accommodation and use of one (1) trailer or mobile home and containing all improvements and utility connections required under this Chapter and other applicable Town codes (includes trailer coaches).

Open sales lot or yard means an accessory use consisting of a defined area or site used exclusively for the retail display and sale of new or used motor vehicles, trailers, agricultural or other mechanized equipment or machinery, boats and recreational vehicles or equipment utilized in association with a principal retail commercial use, but excluding the display, stockpiling or keeping of junk or junked vehicles.

Overlay Zoning District means an area where certain additional requirements are superimposed upon the underlying zoning district where the requirements of the underlying district may or may not be altered.

Parking space means a paved or other all-weather hard-surface area which is designated and reserved exclusively for the parking of vehicles and which has unobstructed access to a street or alley.

Parking space, off-street means a parking space not within a public street or public right-of-way.

Patio means an area, cement or other hard surface such as stone, adjoining a house and used as an area for outdoor lounging, dining, etc.

Plan means the provisions for development of a planned unit development, which may include but need not be limited to easements, covenants and restrictions relating to use, location and bulk of buildings and other structures, intensity of use or density of development, utilities, private and public streets, ways, roads, pedestrian areas, parking facilities, common open space and other public facilities. Provisions of the plan means the written and graphic materials referred to in this definition.

Planned unit development (PUD) means an area of land, controlled by one (1) or more landowners, to be developed under unified control or unified plan of development for a number of dwelling units, residential, commercial, educational, recreational or industrial uses, or any combination of the foregoing, the plan for which does not correspond in lot size, bulk or type of use, density, lot coverage, open space or other restriction to the existing land use regulations.

Planned unit development zoning means a zoning district or zoning district overlay designation which when applied to a defined area of land allows for the modification of zoning and subdivision requirements and regulations so as to provide for and promote flexible and innovative land planning, uses and development pursuant to a unified plan.

Plat means a printed instrument drawn to scale by a professional land surveyor registered or licensed under the laws of the State which accurately depicts, at a minimum, the location, dimensions and boundaries of lots or other units of land, along with adjacent public streets and rights-of-way and easements, and which is to be signed by Town or county officials and recorded in the offices of the County Clerk and Recorder.

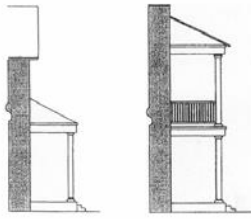
Porch means a covered structure attached to a building forming a covered entrance to a vestibule or doorway. It is external to the walls of the main building proper but may be enclosed by screen, latticework, broad windows or other light frame walls extending from the main structure. For the purpose of measuring setback, the porch may be counted as the start of the building edge.



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**Front Porches:**



Primary building frontage means the longest horizontal linear dimension of a building that is adjacent to or fronts on a public street. The building wall fronting on a public street that includes or is closest to the main entrance of the structure shall be the primary building frontage for a square building situated on the corner of two (2) public streets.

Recyclable material means reusable residential, commercial and industrial materials that are intended for remanufacturing or reconstitution including, but not limited to, metals, glass, plastic, wood and newspaper. Recyclable materials do not include yard waste, junk, rubbish, refuse, tires, waste paper, liquids or hazardous waste.

Recycling collection center means a facility or container for the drop-off and temporary holding of nonliquid recyclable materials originally designed and utilized in household or consumer uses such as paper, cardboard, glass, recyclable metal or plastic.

Recycling facility means a building or an enclosed area where the primary activity is the collection and/or separation of nonliquid recyclable materials (including household recyclables) and the temporary storage of recyclable material prior to shipment to others for reuse and/or processing into new products. A recycling facility may include a recycling collection center.

Restaurant means a business establishment where meals and/or refreshments may be purchased. This also includes pubs, bars, breweries and taverns.

Retail display means the on-site outdoor exhibition of products or merchandise for retail sale by a retail business. For purposes of this definition, on-site means the lot, lots or land on which the retail business is operating, but excluding abutting public land or rights-of-way in the absence of an encroachment license or permit issued by the Town or other public entity owning said abutting public land or right-of-way.

Rowhouse or townhouse means an attached single-family dwelling unit located on land owned by the unit owner and situated in a row of three (3) or more similar horizontally attached dwelling units, each unit having its own separate access to the outdoors and its own separate water, sanitary sewer, ventilation and heating system, inclusive of separate utility service lines and meters, and which is separated from attached adjacent dwelling units by a fire-resistant common wall constructed in conformity with the Town's uniform fire and building codes.

Setback means the minimum horizontal distance required, in any given zone district, to be maintained free of man-made structures between a lot line or property line (projected vertically) and the nearest point along or on an exterior wall or surface of a building or other structure.

Setback line means a line running parallel to a lot line or property line defining the boundary of a setback which is projected on a vertical plane from the ground skyward.

Sign means a structure or part thereof displayed for the purpose of conveying some information, knowledge or idea to the public.

Sign, advertising means a sign which directs attention to a business, service or entertainment conducted, sold or offered elsewhere than on the premises and only incidentally on the premises if at all.

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Sign, business means a sign which directs attention to the business, profession or principal use conducted on the premises.

Sign, incidental or accessory means:

- a. Nonilluminated professional or announcement sign not exceeding two (2) square feet in area and attached wholly to a building;
- b. A sign pertaining only to the rent, lease or sale of the premises upon which displayed and which does not exceed eight (8) square feet in area;
- c. A sign or bulletin board not exceeding twelve (12) square feet in area upon the premises of a church or other institution or business;
- d. A nonilluminated sign indicating the name and purpose of a building and the name of its management, not exceeding three (3) square feet in area;
- e. Nonilluminated signs for the control of traffic and parking, not exceeding four (4) square feet in area; or
- f. Nonilluminated or indirectly illuminated signs indicating names of residents and house numbers, not exceeding one (1) square foot in area.

Sign, nonilluminated means a sign which is not illuminated, either directly or indirectly.

Sign, outdoor advertising means a freestanding or attached poster-panel sign or painted bulletin or fabricated sign.

Sign, temporary construction means a nonilluminated sign of persons or firms connected with work on buildings under actual construction, not exceeding twelve (12) square feet in area.

Special use permit means a permit for a use that is not appropriate generally or without restriction throughout a zone district but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in a zoning district by special use permits, if specific provision for granting such special use permits is made in this Chapter.

State-licensed group home means an owner-occupied or nonprofit residential facility operated or licensed by the State to provide housing and services for up to eight (8) developmentally disabled or mentally ill persons, or up to eight (8) persons sixty (60) years of age or older, along with one (1) or more resident professional staff persons; but excluding halfway houses or other facilities for persons transitioning from a jail or prison back into the community, and excluding facilities for sex offenders and substance abuse treatment/rehabilitation facilities.

Storage means the stockpiling or keeping of materials, products, equipment or goods on a lot or other parcel of land in association with a principal commercial or other nonresidential use, but excluding retail display.

Storage, enclosed means the stockpiling or keeping of materials, products, equipment or goods within a fully enclosed building utilized in association with a principal commercial or other nonresidential use.

Storage, outdoor means a principal or accessory use consisting of the open-air and unscreened stockpiling or keeping of materials, products, equipment or goods utilized in association with a principal commercial or other nonresidential use, but excepting the retail display of motor vehicles, trailers, agricultural equipment or machinery, boats, recreational vehicles or equipment and mechanized equipment in an open sales yard or sales lot, and further excluding the outdoor parking of motor vehicles in designated off-street parking areas or spaces.

Storage, screened means the stockpiling or keeping of materials, products, equipment or goods within an area enclosed by a fence, wall or other physical barrier designed to screen and obstruct the

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visual observation of the enclosed material by a person standing at ground level utilized in association with a principal commercial or other nonresidential use.

Storage space means a commercial facility in which customers can rent space to store possessions.

Storage, unenclosed means the unscreened stockpiling or keeping of materials, products, equipment or goods beyond or outside the confines of a fully enclosed building utilized in association with a principal commercial or other nonresidential use.

Street means a public thoroughfare which affords a principal means of access to abutting property.

Street tree means a tree planted in the public right-of-way adjacent to a street.

Structure means anything constructed or erected six (6) inches or more above grade, or anything attached to something having a permanent foundation or location on the ground; excepting fences, pole-mounted or pedestal bird feeders, moveable yard ornaments, portable child play/recreational equipment, sidewalks, attached stairways, driveways and utility boxes or appurtenant fixtures serving public utilities. Trees, shrubs, gardens and other live vegetation shall also not constitute structures. Disputes or interpretations regarding whether a particular item or structure constitutes a structure within the scope of this definition shall be resolved in accordance with Subsection 16-21(a) of this Chapter.

Structure, nonconforming means a building or other structure that was lawfully established and conforming prior to the adoption or subsequent amendment of this Chapter, but which currently does not comply with the size, location, dimensional or other requirements for the zone district in which it is located.

Structure, temporary means a building or other structure that is not constructed on a permanent foundation and which may or may not be equipped with permanently installed utility lines or plumbing, including, by way of example, tents, trailers, vending carts, huts, portable buildings or seasonal structures.

Temporary use means a use that may or may not be permitted under the regulations for a given zone district, but which may be allowed on a nonpermanent and temporary basis following site specific review and a hearing.

Townhouse means the same as rowhouse.

Tract means a defined parcel of land that is not a lot.

Trailer coach means any wheeled vehicle having an overall width not exceeding eight (8) feet and an overall length, excluding towing gear and bumpers, of not less than twenty-six (26) feet and not more than thirty-two (32) feet, without motive power, which is designed and generally and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which may occasionally be drawn over the public highways by a motor vehicle, Section 42-1-102, C.R.S.

Travel trailer or motor home means a wheeled, vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel and/or recreational purposes, or having a body width not exceeding eight (8) feet. This is also intended to include structures mounted on auto or truck bodies that are referred to as "campers."

Use means any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Use, accessory means a use located on the same lot with a principal use and clearly incidental or subordinate to and customary in connection with the principal use.

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Use, nonconforming means any use or activity that was lawfully established and conforming prior to the adoption or subsequent amendment of this Chapter and which has been continuously maintained since that time, but which currently is not allowed and/or does not conform and comply with the requirements of the zone district in which it is located.

Use, permitted means a specific use of land, buildings or structures authorized and allowed by right in a given zone district.

Use, principal means the main use on a lot.

Use, special means a specifically identified use of land, buildings or structures which may only be allowed in a particular zone district in accordance with specific terms and conditions following review and public hearing.

Vacation rental means a dwelling occupied by a paying guest on a temporary or transient basis, not exceeding thirty (30) days, where kitchen and other food preparation facilities may be provided, and which is not owner occupied. A vacation rental does not include owner-occupied bed-and-breakfast establishments, but does include cabins and similar structures designed and intended to be occupied by the traveling public for less than thirty (30) consecutive days.

Variance means a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary hardships or practical difficulties.

Waste, hazardous means any refuse or discarded material or combinations of refuse or discarded materials in solid, semisolid, liquid or gaseous form which cannot be handled by routine waste management techniques because they pose an actual or potential hazard to human health or to the health of other living organisms or the natural environment because of their chemical, biological or physical properties. Categories of hazardous waste include, but are not limited to, explosives, flammables, oxidizers, solvents, herbicides, liquid petroleum by-products and waste oils, poisons, irritants and corrosives.

Wholesale or manufacturing means the processing of goods and services in large quantity to be retailed by others, where customers are incidental in nature.

Wrecked vehicle shall have the same definition as described in Paragraph 8-41(3) of this Code.

Yard means an open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees or shrubbery or as otherwise provided herein.

Yard, front means a yard across the full width of the lot extending from the front line of the building to the front line of the lot.

Yard, rear means a yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.

Yard, side means an open, unoccupied space on the same lot with a building between the building and the side line of the lot extending through from the front of the building line to the rear of the building.

(Prior code 17.12.015, 17.12.020, 17.12.025, 17.12.030, 17.12.035, 17.12.040, 17.12.045, 17.12.050, 17.12.055, 17.12.060, 17.12.065, 17.12.070, 17.12.075, 17.12.076, 17.12.080, 17.12.085, 17.12.090, 17.12.095, 17.12.100, 17.12.105, 17.12.110, 17.12.115, 17.12.116, 17.12.120, 17.12.125, 17.12.130, 17.12.135, 17.12.140, 17.12.145, 17.12.150, 17.12.155, 17.12.160, 17.12.165, 17.12.170, 17.12.175, 17.12.180, 17.12.185, 17.12.190, 17.12.195, 17.12.200, 17.12.205, 17.12.210, 17.12.215, 17.12.220, 17.12.225, 17.12.230, 17.12.235, 17.12.240, 17.12.245, 17.12.250, 17.12.255, 17.13.011, 17.13.012, 17.13.013; Ord. 5-2000 §4;

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Ord. 13-2000 §2; Ord. 11-2001 §1; Ord. 2-2002 §1; Ord. 12-2002 §1; Ord. 3-2003 §1; Ord. 6-2003 §1; Ord. 12-2003 §1; Ord. 9-2004 §2; Ord. 3-2005 §1; Ord. 16-2005 §1; Ord. 10-2008 §4; Ord. §4, 2010; Ord. 14 §2, 2010; Ord. 30 §1, 2010; Ord. 5 §2, 2011; Ord. 5 §1, 2012; Ord. 13 §1, 2012)

#### **Sec. 16-5. Conflicting regulations.**

The provisions and standards contained in this Chapter set forth the minimum requirements necessary to enhance and protect the public health, safety and welfare and shall be liberally interpreted and applied to serve such purposes. Notwithstanding the foregoing, whenever the requirements of the Zoning Code are at variance or pose a conflict with the requirements of other provisions of the Municipal Code, or any other lawfully adopted rules, regulations, resolutions or ordinances of the Town, the requirements which are the most restrictive upon property use or development rights, or which require compliance with the more stringent standards, shall apply to the extent of such variance or conflict. Additionally, while the Town shall not be bound by or limited in the exercise of its authority under this Chapter by any restrictive covenant or deed restriction on the use of land to which it is not a signatory, the provisions of this Chapter shall not supersede any private contract or covenant limiting or making more restrictive the use of any land, building or structure.

(Prior code 17.14.010; Ord. 11-2001 §1)

#### **Sec. 16-6. Amendments to this Chapter or the Town's zone district boundaries or map.**

- (a) This Chapter, including the official zoning map and the zone district boundaries, may be amended from time to time, but no amendment shall become effective unless it shall have been first submitted to the Town's Planning and Zoning Commission for review and recommendation. The Commission shall have forty-five (45) days within which to submit its report to the Board of Trustees. If the Commission fails to submit a report within the forty-five-day period, it shall be deemed to have approved the proposed amendment.
- (b) No amendment to the zoning map or to the text of this Chapter shall be effective unless voted upon by the Board of Trustees after a public hearing thereon at which citizens and parties in interest shall have had an opportunity to be heard. Notice of a public hearing on a map or text amendment shall be provided by publication in a newspaper of general circulation within the Town not less than fifteen (15) days prior to the hearing. Additionally, proposed site specific map amendments involving only a single lot or parcel, or only separately identified lots or parcels under single ownership, shall require that the lots or parcels subject to the proposed amendment be posted with notice of the amendment not less than ten (10) days before the public hearing thereon; and individual written notice shall be mailed by regular first-class U.S. mail to all owners of property abutting the lot or parcel subject to the proposed map amendment, disregarding intervening public streets or other public rights-of-way, not less than ten (10) days before the hearing, or hand delivered not less than five (5) days prior thereto.
- (c) Zone district changes approved by the Planning and Zoning Commission and Board of Trustees shall be considered immediately binding and reflected on the Town Zoning Map.
- (d) Posted notices shall not be less than twenty-two (22) inches wide and twenty-six (26) inches long, shall be constructed of waterproof/weather-resistant materials, shall utilize print not less than one (1) inch in height and shall be placed facing the street at a conspicuous place on the subject property.
- (e) All notices as required by this Section shall contain, at a minimum, the name of the applicant seeking the amendment, if any; a plain and brief description of the proposed amendment, inclusive of a concise description of the text or map designation sought to be amended; the place, date and time of

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the public hearing and the name of the body conducting same; a concise description of the property subject to any map amendment; and the address/telephone number where additional information concerning the proposed amendment can be obtained, e.g., the Town Clerk's office.

- (f) For purposes of this Section, the names and addresses of the owners of abutting properties shall be those as listed in the real property tax records for the County as of the date the subject application was filed with the Town.
- (g) The accurate and timely noticing by posting and mail regarding an amendment to the zoning map shall be the responsibility of the applicant, while the Town shall be responsible for the noticing by newspaper publication.
- (h) In the event a written protest is filed with the Town Clerk against proposed changes to the text of this Chapter, or against amendments to the zoning map or to the boundaries of a zone district applicable to particular land, at least twenty-four (24) hours prior to the vote of the Board of Trustees thereon, and such protest is signed by the owners of not less than twenty percent (20%) of the land area surrounding and extending one hundred (100) feet from the land area which is the subject of the proposed change, disregarding intervening streets and other public rights-of-way, such change shall not be adopted or become effective except upon the favorable vote of two-thirds (?) of all of the members of the Board of Trustees.

(Prior code 17.11.010; Ord. 11-2001 §1; Ord. 15-2005 §1)

**Secs. 16-7—16-20. Reserved.**

## **ARTICLE II Administration and Enforcement**

[Sec. 16-21. Intent.](#)

[Sec. 16-22. Enforcement officer.](#)

[Secs. 16-23—16-40. Reserved.](#)

### **Sec. 16-21. Intent.**

- (a) It is the intent of this Chapter that all questions arising in connection with the enforcement or the interpretation of this Chapter shall first be presented to the Town Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the Town Administrator; and that from the decision of the Board of Adjustment, recourse shall be taken to the courts as provided by law.
- (b) It is further the intent of this Chapter that the duties of the Board of Trustees in connection with this Chapter shall be limited to those specifically set forth within this Chapter for the Board of Trustees, acting in its capacity as the Board of Adjustment.

(Prior code 17.09.010; Ord. 16 §1, 2012)

### **Sec. 16-22. Enforcement officer.**

The Town Administrator, or such subordinate officer as he or she may designate and authorize, shall enforce and administer the provisions of this Chapter.

(Prior code 17.09.020; Ord. 11-2001, §2)

### **Secs. 16-23—16-40. Reserved.**

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## **ARTICLE III Board of Adjustment**

[Sec. 16-41. Membership and meetings.](#)

[Sec. 16-42. Decisions of Board of Adjustment.](#)

[Sec. 16-43. Appeals from decisions of Town Administrator.](#)

[Sec. 16-44. Appeals from Board of Adjustment.](#)

[Secs. 16-45—16-60. Reserved.](#)

### **Sec. 16-41. Membership and meetings.**

- (a) The Board of Trustees shall act as the Board of Adjustment. Four (4) Board members must be present at any meeting to constitute a quorum and conduct business. Should any member of the Board of Adjustment cease to be a Trustee, his or her membership on the Board of Adjustment shall immediately terminate.
- (b) The Mayor shall act as the Chair of the Board of Adjustment, and the Board of Adjustment shall elect from its membership such other officers as it may deem necessary during its first meeting of each calendar year and adopt such rules as may be necessary for conducting its business.
- (c) Meetings of the Board of Adjustment shall be held at the call of the Mayor. All meetings shall be open to the public. Members of the Board of Adjustment shall be notified at least twenty-four (24) hours prior to the time of the meetings. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Town Clerk and shall be a public record.

(Prior code 17.10.010; Ord. 11-2001 §3; Ord. 16 §2, 2012)

### **Sec. 16-42. Decisions of Board of Adjustment.**

The concurring vote of a majority of the members of the Board of Adjustment present shall be necessary to reverse any order, requirement, decision or determination of the Town Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this Chapter. All decisions of the Board of Adjustment shall be reduced to writing, set forth a plain statement of the grounds and reasons therefor and be delivered to the appellant and all other interested persons who have so requested.

(Prior code 17.10.020; Ord. 11-2001 §3; Ord. 16 §3, 2012)

### **Sec. 16-43. Appeals from decisions of Town Administrator.**

- (a) Appeals to the Board of Adjustment may be taken by any person subject to and aggrieved by a decision of the Town Administrator or other zoning enforcement official made under this Chapter. Such appeal shall be taken within ten (10) days from the date of the decision sought to be appealed by filing with both the Town Administrator and Town Clerk a written notice specifying the grounds thereof. All appeals shall be accompanied by the appropriate fee. The Town Administrator shall promptly transmit to the Board of Adjustment all papers constituting the record upon which the action

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or decision being appealed was taken. A timely appeal shall stay all proceedings in furtherance of the action appealed from unless the Town Administrator certifies to the Board of Adjustment that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of competent jurisdiction for good cause shown on notice to the Town Administrator.

- (b) The Board of Adjustment shall fix a reasonable time and place for a hearing on an appeal not more than forty-five (45) days after the date of receipt of the notice of appeal, and send notice thereof in writing by regular mail to the appellant not less than fifteen (15) days in advance. The appellant shall appear in person or by an agent or attorney at the hearing and be heard. Absent good and just cause, the failure of an appellant or his or her agent or attorney to attend the hearing on appeal shall constitute an abandonment of the appeal and no further proceedings shall be had thereon. Appeals shall be heard and determined in a reasonably prompt fashion. Final decisions of the Board of Adjustment shall be reduced to writing and signed by the chairperson and shall be provided to the applicant.

(Prior code 17.10.030; Ord. 11-2001 §3)

#### **Sec. 16-44. Appeals from Board of Adjustment.**

Any person or persons aggrieved by a decision of the Board of Adjustment, including any officer of the Town, may within thirty (30) days after the date upon which the Board of Adjustment renders its decision, but not thereafter, present to a court of competent jurisdiction a petition for review of such decision by certiorari in the manner prescribed by law.

(Prior code 17.10.050; Ord. 11-2001 §3; Ord. 16 §5, 2012)

#### **Secs. 16-45—16-60. Reserved.**

ARTICLE IV Variances and Special and Temporary Use Permits

**ARTICLE IV Variances and Special and Temporary Use Permits**

[Sec. 16-61. Special use permits.](#)

[Sec. 16-62. Variances.](#)

[Sec. 16-63. Temporary use permits.](#)

[Sec. 16-64. Temporary vendors.](#)

[Sec. 16-65. Appeals from decisions of Board of Trustees.](#)

[Secs. 16-66—16-80. Reserved.](#)

**Sec. 16-61. Special use permits.**

- (a) A use that is not allowed as a matter of right or without restriction in a zone district may be authorized by special use permit granted by the Board of Trustees. Only uses identified as a special use within a particular zone district may be approved.
- (b) Special use permits may or may not run with the land and shall be issued subject to safeguards, terms and conditions as deemed necessary and appropriate by the Board of Trustees to protect and preserve the intent and purposes of this Chapter. Violations of the terms and conditions imposed on a special use permit shall be deemed violations of this Section and shall be punishable under the general penalty provisions of this Code.
- (c) Applications for a special use permit (with appropriate copies and supporting materials) shall be submitted to the Town Administrator on forms provided therefor. A reasonable fee shall be charged for each application, and a site plan and/or other drawing and information may be required as part of the application. Actual costs for professional planning, engineering, legal and/or other consulting services incurred by the Town in reviewing an application shall be paid by the applicant.
- (d) All applications for a special use permit shall be initially reviewed by town staff for completeness and recommendation and then referred to the Planning and Zoning Commission for review. The permit applicant shall be notified in advance of the time and place of the Planning and Zoning Commission's review and shall be allowed to attend and participate therein. The Planning and Zoning Commission shall, in writing, recommend approval, denial or conditional approval of the application. The written recommendation shall be submitted to the Board of Trustees not later than the time of the public hearing which is to be held as required by Subsection (e) below. If the Commission fails to submit its recommendation at or prior to the public hearing, the Commission shall be deemed to have recommended to the Board of Trustees the unconditional approval of the application.
- (e) A public hearing shall be held by the Board of Trustees on each application for a special use permit. Not less than fifteen (15) days prior to the hearing, written notice describing the requested special use and the time and place for the hearing shall be prominently posted on the property subject to the application and sent by regular mail to the applicant and the owners of all properties that abut or adjoin the subject property (excluding public rights-of-way).
- (f) Special use permits shall be granted by the Board of Trustees by written resolution, but only after finding that the proposed special use will not adversely impact the neighborhood or the public safety and welfare. In determining whether to grant a permit, the Board of Trustees shall consider, as applicable, the following factors:
  - (1) Ingress and egress to the property and proposed structures, with particular reference to automotive and pedestrian safety, convenience, traffic flow and control and access in case of fire or catastrophe;

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- (2) The need and/or adequacy of off-street parking and loading areas and the economic, noise, glare or odor effects of the special use on adjoining properties and the neighborhood generally;
  - (3) Refuse and service areas;
  - (4) Utilities, with reference to location, availability and compatibility;
  - (5) Screening and buffering, with reference to type, dimensions and character;
  - (6) Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety and compatibility and harmony with properties in the neighborhood;
  - (7) Required yards and other open spaces; and
  - (8) General compatibility with adjacent property and other property in the neighborhood.
- (g) A special use permit in and of itself shall not constitute a site specific development plan for purposes of vesting a property right; however, a special use permit may be incorporated into a site specific development plan as part of a larger or different land use approval. Unless substantially acted upon within one (1) year from date of approval as illustrated by actual construction or other objectively measurable development activity, or such shorter time period as specified by the Board of Trustees, the permit shall expire and become void.

(Prior code 17.16.010; Ord. 15-1993 §1; Ord. 4-2001 §1)

#### **Sec. 16-62. Variances.**

- (a) The Board of Trustees shall have the power to authorize variances from the terms of this Chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of this Chapter will in an individual case result in practical difficulty or unnecessary hardship.
- (b) Applications for a variance (with appropriate copies and supporting materials) shall be submitted to the Town Administrator on forms provided therefor. A reasonable fee shall be charged for each application, and a site plan and/or other drawing and information may be required as part of the application. Actual costs for professional planning, engineering, legal and/or other consulting services incurred by the Town in reviewing an application shall be paid by the applicant.
- (c) All applications for a variance shall be initially reviewed by Town staff for completeness and recommendation and then referred to the Planning and Zoning Commission for review. The variance applicant shall be notified in advance of the time and place of the Planning and Zoning Commission's review and shall be allowed to attend and participate therein. The Planning and Zoning Commission shall, in writing, recommend approval, denial or conditional approval of the application. The written recommendation shall be submitted to the Board of Trustees not later than the time of the public hearing which is to be held as required by Subsection (d) below. If the Commission fails to submit its recommendation at or prior to the public hearing, the Commission shall be deemed to have recommended to the Board of Trustees the unconditional approval of the application.
- (d) A public hearing shall be held by the Board of Trustees on each application for a variance. Not less than fifteen (15) days prior to the hearing, written notice describing the requested variance and the time and place for the hearing shall be prominently posted on the property subject to the application and sent by regular mail to the applicant and the owners of all properties that abut or adjoin the subject property (excluding public rights-of-way).
- (e) Variances shall be granted by written resolution, but only to the extent that the variance requested:
  - (i) is the minimum variance needed to make possible the reasonable use of the subject land, building or structure;
  - (ii) is necessary to relieve hardship or practical difficulty imposed by the strict application of the subject regulation;
  - (iii) is not a request to permit a use of land, building or structure that is not

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permitted by right or by special use permit in the district involved; and (iv) two (2) of the following three (3) standards have been substantially met:

- (1) There are extraordinary or exceptional conditions pertaining to the particular structure, place or property in question that are not applicable to other lands or structures in the same district;
  - (2) The requested variance will be in harmony with the purpose and intent of this Chapter and will not adversely impact adjacent properties, the neighborhood or the general welfare; and
  - (3) The extraordinary and exceptional circumstances are not the result of the actions of the applicant.
- (f) In granting a variance, the Board of Trustees may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violations of conditions and safeguards made part of the terms under which a variance is granted shall be deemed violations of this Section and shall be punishable under the general penalty provisions of this Code.
- (g) The existence of nonconforming land, buildings or structures in the same neighborhood or district, or of permitted or nonconforming uses in other districts, shall not constitute a reason for granting of a requested variance.
- (h) A variance in and of itself shall not constitute a site specific development plan for purposes of vesting a property right; however, a variance may be incorporated into a site specific development plan as part of larger or different land use approval. Unless substantially acted upon within one (1) year from the date of approval as illustrated by actual construction or other objectively measurable development activity, or such shorter time period as specified by the Board of Trustees, a variance shall expire and become void.

(Prior code 17.16.020; Ord. 15-1993 §2, Ord. 4-2001 §1; Ord. 1-2003 §1)

#### **Sec. 16-63. Temporary use permits.**

Temporary uses and structures are those uses and structures that may or may not be permitted in a given zone district, but which may be allowed on a nonpermanent and temporary basis upon review of their proposed nature, location and duration, and their compatibility with surrounding uses and structures within an underlying zone district; excepting outdoor commercial merchandising or retail uses or displays located in residential zone districts, which shall not be permitted as temporary uses.

- (1) Except as otherwise provided in this Section, no temporary use or structure shall be used, located or permitted in any residential zone district except upon review and approval of the Board of Trustees in accordance with the procedures, standards and limitations set forth in this Section. Likewise, no temporary use or structure shall be used, located or permitted in any nonresidential (e.g., business, commercial or industrial) zone district except upon review and approval by the Town Administrator in accordance with the procedures, standards and limitations set forth in this Section. Notwithstanding the foregoing, the following temporary uses or structures shall be exempt from the provisions of this Section:
  - a. Construction project offices or trailers erected pursuant to an approved construction project, not to exceed six (6) months.
  - b. Display booths, gazebos, vending carts or similar structures or devices erected pursuant to a permit authorizing the use of publicly owned property for a festival, carnival, nonprofit fundraiser or other civic or entertainment event.
  - c. Nonprofit fundraising events such as church bazaars, farmers markets, seasonal festivals or substantially similar events in residential zone districts, inclusive of the use of tents, gazebos, carts and similar temporary structures.

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- d. The use of party tents for weddings or similar private functions in any zone district for not more than seventy-two (72) hours, and nonrecurring garage, yard or estate sales in residential zone districts; except the holding of four (4) or more garage, yard or estate sales, or any combination thereof, at the same location or property in a residential zone district in any one (1) calendar year shall be deemed the operation of a business and shall be governed under Section 16-254 of this Code.
- (2) Temporary use permits shall be issued subject to such safeguards, terms and conditions as may be deemed necessary and appropriate by the Board of Trustees or Town Administrator to protect and preserve the intent and purposes of this Chapter. Violations of any of the terms and conditions imposed on a temporary use permit shall be deemed to be violations of this Section and shall be punishable under the general penalty provisions of this Code.
- (3) Applications for a temporary use permit (with appropriate copies and supporting materials) shall be made to the Town Administrator on forms provided therefor. A reasonable fee shall be charged for each application, and a site plan and/or other drawing and information as deemed necessary by the Town Administrator may be required as part of the application. Actual costs for professional planning, engineering, legal and/or other consulting services incurred by the Town in reviewing an application shall be paid by the applicant.
- (4) All applications for a temporary use permit in a residential zone district shall be initially reviewed by Town staff for completeness and recommendation, and then referred to the Planning and Zoning Commission for review. The permit applicant shall be notified in advance of the time and place of the Planning and Zoning Commission's review and shall be allowed to attend and participate therein. The Planning and Zoning Commission shall, in writing, recommend approval, denial or conditional approval of the application. The written recommendation shall be submitted to the Board of Trustees not later than the time of the public hearing which is to be held upon the request as required by Paragraph (5) below. If the Commission fails to submit its recommendation concerning a request at or prior to the public hearing, the Commission shall be deemed to have recommended to the Board of Trustees the unconditional approval of such request.
- (5) A public hearing shall be held by the Board of Trustees on each application for a temporary use permit in a residential zone district. Not less than five (5) business days prior to the hearing, written notice describing the requested temporary use and the time and place for the hearing shall be prominently posted on the property subject to the application, and sent by regular mail to the applicant and the owners of all properties that abut or adjoin the subject property (excluding public rights-of-way).
- (6) All applications for a temporary use permit in a nonresidential zone district shall be reviewed by the Town Administrator for completeness and compliance with the permit approval criteria set forth in this Section. Except for applications for a temporary use or structure that will have a duration of not more than seventy-two (72) hours, prior to rendering a decision on a permit application, the Town Administrator shall require that a written notice be prominently posted on the property subject to the application stating that an application for a temporary use permit has been submitted to the Town Administrator for approval, describing the proposed temporary use and/or structure, and informing all interested persons that any objections or comments concerning the permit application and/or proposed permit must be submitted in writing and received by the Town Administrator by a specified date certain, such date being not less than two (2) business days prior to the date of any decision on the permit application. In addition to the posted notice, written notice of the proposed temporary use, excepting temporary uses not to exceed seventy-two (72) hours in duration, shall be sent by regular mail to the owners of all properties that abut or adjoin the subject property (excluding public rights-of-way) not less than five (5) business days prior to the date of any decision rendered by the Town Administrator on the permit application. Such written notice shall contain the same information as required for the posted notice described above. Should no objections be timely filed with the Town

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Administrator, then the Town Administrator shall grant or deny the permit application as he or she deems necessary and appropriate. In the event that the Town Administrator receives a timely written objection to an application, the application shall be promptly referred to the Board of Trustees for review and determination at a public hearing in the manner described in Paragraph (5) above, such hearing to be preceded by posted and written notice as provided for in said subsection. Applications for a permit involving a temporary use not to exceed seventy-two (72) hours in duration will be acted upon promptly by the Town Administrator absent any posting or mailing of notice as otherwise provided for in this Subsection.

- (7) Appeals from a decision of the Town Administrator approving or denying an application for a temporary use permit shall be made to the Board of Trustees in writing by filing the same with the Town Clerk within ten (10) days from the date of the decision appealed from. All appeals shall be heard by the Board of Trustees de novo and shall be conducted at a public meeting within thirty (30) days from the filing of the appeal, or as soon thereafter as can be accommodated. The Town Clerk shall notify the appellant and, if different, the permit applicant by certified mail, return receipt requested, of the date the appeal shall be heard at least seven (7) days in advance of the hearing. The decision of the Board of Trustees on appeal may be issued orally, but shall thereafter be reduced to writing within a reasonable period of time after the conclusion of the hearing and mailed to the appellant and, if different, the permit applicant.
- (8) Temporary use permits shall be granted, as applicable, by the Board of Trustees by written resolution and by the Town Administrator by written order, but only after finding that the proposed temporary use or structure will not adversely impact the neighborhood or the public safety and welfare. In determining whether to grant a permit, the Board of Trustees and Town Administrator shall consider, as applicable, the following factors:
  - a. The location, size, design, operating characteristics and visual impacts of the proposed use or structure;
  - b. The compatibility of the proposed temporary use or structure with the character, density and use of structures and uses in the immediate vicinity;
  - c. Ingress and egress to the property and proposed structures, with particular reference to automotive and pedestrian safety, convenience, traffic flow and control, and access in case of fire or catastrophe;
  - d. Off-street parking and loading areas where required, and the economic, noise, glare or odor effects of the temporary use or structure on adjoining properties and the neighborhood generally;
  - e. Refuse and service areas;
  - f. Utilities, with reference to location, availability and compatibility;
  - g. Signs, lighting, screening and buffering, with reference to type, dimensions and character;
  - h. The duration of the proposed temporary use or structure and whether a temporary use or structure has previously been approved for the structure, parcel, property or location as proposed in the application; and
  - i. The purposes and intent of the underlying zone district in which the temporary use or structure is proposed.
- (9) A temporary use permit shall not constitute a site specific development plan for purposes of vesting a property right, and the failure of an applicant to adhere to any condition of approval allowing a temporary use or structure shall result in the forfeiture of the approval, and shall be deemed a violation of this Section and punishable under the general penalty provisions of this Code.

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- (10) Permits for temporary uses and structures may be granted for a period not to exceed one hundred eighty (180) days from the date upon which they were initially granted, unless a shorter period is specified in the approval. Requests for extensions may only be granted by the Board of Trustees, except for requests for an extension of a permit issued by the Town Administrator, who may, at his or her discretion, grant such extension. Only one (1) extension may be granted per permit. Requests for an extension must be submitted in writing to the Town Administrator not less than thirty (30) days prior to the expiration of the initial permit period. All proposed extensions of a permit shall be evaluated under the same criteria as set forth in Paragraph (8) above. Extension requests made to the Board of Trustees shall be heard and ruled upon at a public meeting. Requests for extensions made to the Town Administrator shall be ruled upon administratively without need for a hearing. A timely and properly filed request for an extension shall allow the continuation of an existing temporary use or structure until such time as the Trustees or, as appropriate, the Town Administrator, have ruled on the extension request.

(Ord. 4-2001 §1; Ord. 5-2003 §1; Ord. 6-2004 §1)

**Sec. 16-64. Temporary vendors.**

- (a) Temporary vendors are those activities and associated structures that may be allowed pursuant to this Section on a nonpermanent and temporary basis upon review of their proposed nature, location and duration and their compatibility with surrounding uses and structures within an underlying zone district.
- (b) Except as otherwise provided in this Section, no temporary vendor shall be located or permitted in any residential zone district except upon review and approval of the Board of Trustees in accordance with the procedures, standards and limitations set forth in this Section. Likewise, no temporary vendor shall be located or permitted in any nonresidential zone district except upon review and approval by the Town Administrator in accordance with the procedures, standards and limitations set forth in this Section.
- (c) No person shall conduct business as a temporary vendor without first obtaining a permit from the Town and paying the required fee. It shall be unlawful for any person to sell any goods or services on a temporary basis within the Town except as provided by this Section.
- (d) Temporary vendor permits shall be issued subject to such safeguards, terms and conditions as deemed necessary and appropriate by the Board of Trustees or the Town Administrator to protect and preserve the intent and purpose of this Chapter. Violations of any of the terms and conditions imposed on a temporary vendor shall be deemed to be violations of this Section and shall be punishable under the general penalty provisions of this Code.
- (e) Applications for a temporary vendor permit shall be made to the Town on forms provided therefor. A reasonable fee shall be charged for each application as set by the Board of Trustees, and a site plan and other drawings and information as deemed necessary by the Town Administrator shall be required as part of the application.
- (f) All applications for a temporary vendor permit in a residential zone district shall follow the process set forth in Paragraphs 16-63(4) and (5) of this Article.
- (g) Temporary vendor permits shall be granted by written order, but only after finding that the proposed temporary vendor will not adversely impact the neighborhood or the public safety and welfare. In determining whether to grant a temporary vendor permit, the following factors shall be considered:
  - (1) The location, size, design, operating characteristics and visual impacts of the proposed use or structure.
  - (2) The ingress and egress to the property and proposed structures, with particular reference to automotive and pedestrian safety, convenience, traffic flow and access in case of fire or other



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catastrophe. The location of the temporary vendor may not cause congestion of vehicular or pedestrian traffic and shall not be placed in right-of-way sight triangles as determined by the Public Works Department.

- (3) Off-street parking and loading areas and the noise, glare or odor effects of the temporary vendor on adjoining properties and the neighborhood generally.
  - (4) Refuse and service areas.
  - (5) Utilities, with reference to location, availability and compatibility.
  - (6) Signs, lighting, screening and buffering with reference to type, dimensions and character. Each vendor may have two (2) signs; no one (1) sign shall exceed twelve (12) square feet in size. Signs must be constructed of durable materials. Temporary banner signs shall only be allowed as provided for in Subsection 16-242(g) of this Code (relating to temporary signs). Proposals for signs exceeding the maximum size requirements of this Section shall be reviewed under the Comprehensive Sign Plan process as outlined in Subsection 16-242(e) of this Code.
  - (7) The use of a Town-owned parcel or park may be permitted, denied or limited by the number of days by the Town Administrator based on the number of existing vendors already using the area, compatibility with existing uses or users of the space, permitted special events or any of the factors as set forth by Paragraphs (1) through (6) above.
- (h) Permits for temporary vendors shall be granted for a period not to exceed more than one hundred eighty (180) total days in one (1) calendar year, in increments of seven (7), thirty (30), ninety (90) and one hundred eighty (180) days.
  - (i) The Town may require temporary vendors to move their facility offsite for the purposes of managing sanitation requirements prior to returning their facility to that location.
  - (j) No temporary vendor shall occupy one (1) location (location for this purpose shall mean a legally defined lot or parcel of property) for a period longer than thirty (30) days in aggregate in any single calendar year without prior Town approval. Approval shall be provided if the temporary vendor demonstrates satisfactory maintenance and sanitation of the vendor's site and no unreasonably negative impacts to the site and surrounding area.

(Ord. 12 §1, 2012)

#### **Sec. 16-65. Appeals from decisions of Board of Trustees.**

All appeals from the decisions of the Board of Trustees made pursuant to this Article shall be taken in the manner and within the time period provided by law.

(Prior code 17.16.030; Ord. 4-2001 §1; Ord. 4 §1, 2010)

#### **Secs. 16-66—16-80. Reserved.**

## **ARTICLE V Establishment of Districts**

[Sec. 16-81. Use districts.](#)

[Sec. 16-82. District boundaries.](#)

[Sec. 16-83. Interpretation of district boundaries.](#)

[Secs. 16-84—16-100. Reserved.](#)

### **Sec. 16-81. Use districts.**

For the purpose of this Chapter, the Town is divided into twelve (12) zone districts, designated as follows:

- R-1 Low-Density Residential District;
- R-1 OT Low-Density Residential Overlay District, Original Town site;
- R-2 General Residential District;
- R-2 OT General Residential Overlay District, Original Town site;
- R-3 High-Density Residential District;
- R-3 OT High-Density Residential Overlay District, Original Town site.
- PUD Planned Unit Development District;
- B-1 General Business District;
- B-2 Highway Business District;
- I-1 Light Industrial District;
- S-1 Special Recreational District;
- APO Airport Protection Overlay District.

(Prior code 17.03.010; Ord. 3-1991 §1; Ord. 3-2005 §2; Ord. 13-2005 §1; Ord. 16-2005 §2)

### **Sec. 16-82. District boundaries.**

The boundaries of such zone districts are established as shown on the map entitled "Official Zoning Map, Town of Buena Vista, Colorado" adopted by the Board of Trustees and certified by the Town Clerk. The map and all explanatory matter thereon accompanies and is made a part of this Chapter as if fully written herein. The map shall be retained in the Town Hall.

(Prior code 17.03.020)

### **Sec. 16-83. Interpretation of district boundaries.**

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Official Zoning Map, the following rules shall apply:

## CHAPTER 16 - Zoning

### ARTICLE V Establishment of Districts

- (1) Where district boundaries are indicated as approximately following the centerlines of streets, alleys, highways, streams, irrigation ditches, rivers, street or railroad right-of-way lines or such lines extended, such lines shall be construed to be such boundaries.
- (2) Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be the boundaries.
- (3) Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, alleys, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Zoning Map.
- (4) Where a district boundary line divides a lot in single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such a lot more than thirty-five (35) feet beyond the district boundary line.
- (5) Where physical or cultural features existing on the ground are at variance with those shown on the Zoning Map, or in other circumstances not covered previously in this Section, the Board of Adjustment shall interpret the district boundaries.

(Prior code 17.03.030)

**Secs. 16-84—16-100. Reserved.**

## **ARTICLE VI District Restrictions**

[Sec. 16-101. Use.](#)

[Sec. 16-102. Density.](#)

[Sec. 16-103. Yard use limitations.](#)

[Secs. 16-104—16-120. Reserved.](#)

### **Sec. 16-101. Use.**

No building or land shall hereafter be used or occupied and no building, structure or part thereof shall be erected, moved or structurally altered except in conformity with the regulations of this Chapter or amendments thereto, for the district in which it is located.

(Prior code 17.04.010)

### **Sec. 16-102. Density.**

No building shall hereafter be erected or altered so as to exceed the density regulations of this Chapter for the district in which it is located.

(Prior code 17.04.020)

### **Sec. 16-103. Yard use limitations.**

No part of a yard or other open space required about any building for the purpose of complying with the provisions of this Chapter shall be included as a part of a yard or other open space similarly required for another building.

(Prior code 17.04.030)

### **Secs. 16-104—16-120. Reserved.**

## **ARTICLE VII Nonconformities**

[Sec. 16-121. Intent.](#)

[Sec. 16-122. Continuance of nonconforming uses.](#)

[Sec. 16-123. Continuation of nonconforming structures.](#)

[Sec. 16-124. Nonconforming residences.](#)

[Sec. 16-125. Nonconforming lots of record.](#)

[Sec. 16-125.5. Merger of nonconforming lots.](#)

[Sec. 16-126. Prohibition.](#)

[Secs. 16-127—16-140. Reserved.](#)

### **Sec. 16-121. Intent.**

As the result of the adoption, amendment and repeal from time to time of the regulations within this Chapter, certain land uses, lots or structures which were lawfully established or allowed at the time of their creation have become nonconforming and prohibited. It is the intent of this Article to allow the continuation of such nonconforming uses, lots and structures, subject to the provisions contained herein, and to allow for the repair, renovation or enlargement of nonconforming structures under specified circumstances.

(Prior code 17.05.010; Ord. 13-2000 §1)

### **Sec. 16-122. Continuance of nonconforming uses.**

Nonconforming uses lawfully existing prior to the enactment of this Chapter, or any amendment thereto, shall be allowed to continue in the same manner and to the same degree as established before their designation or classification as nonconforming uses, subject to the following:

- (1) A nonconforming use may only continue within the same land area and/or site coverage as originally established, and may not be expanded or enlarged.
- (2) A nonconforming use may not be changed or altered to another nonconforming use and may not be restored or reestablished after having once been changed to a conforming use.
- (3) A nonconforming use may not be resumed, restored or reestablished after a discontinuance of six (6) months or more.
- (4) A nonconforming use may not be resumed, restored or reestablished when, regardless as to cause, the building(s) or structure(s) housing the use has been damaged in excess of sixty percent (60%) of its fair market value immediately preceding the damage, or destroyed in its entirety.

(Prior code 17.05.020; Ord. 13-2000 §1)

ARTICLE VII Nonconformities

**Sec. 16-123. Continuation of nonconforming structures.**

Nonconforming structures lawfully existing prior to the enactment of this Chapter, or any amendment thereto, shall be allowed to continue despite their nonconformity and may be renovated, repaired, restored or expanded, but only to the extent that the proposed renovation, restoration, repair or expansion will not increase or expand the nonconforming aspects or features of the subject structure, including, without limitation, nonconformities with respect to site coverage, parking, height or setbacks.

(Ord. 13-2000 §1; Ord. 17-2002 §1)

**Sec. 16-124. Nonconforming residences.**

Notwithstanding any provision within this Article to the contrary, single-family, duplex or multifamily dwellings, excluding mobile homes, located in zone districts other than residential districts may be enlarged, altered, rebuilt or repaired provided that no new or additional dwelling units are added or result therefrom, and provided that any enlargement, alteration, rebuilding or repair complies with the dimensional limitations established for the General Residential (R-2) zone district.

(Prior code 17.05.030; Ord. 13-2000 §1)

**Sec. 16-125. Nonconforming lots of record.**

Where the owner of a nonconforming lot of record that was lawfully established prior to the adoption of this Chapter, or any amendment thereto, does not own sufficient contiguous land that can be joined to the lot to make it conform with the minimum lot size requirements for the zone district in which it is located, such lot may still qualify as a lawful building site subject to the following conditions:

- (1) The lot area and lot width are not more than twenty percent (20%) below the minimums specified for the zone district in which the lot is located, and all other dimensional requirements can be complied with; or
- (2) Where the lot area and/or lot width are more than twenty percent (20%) below the minimums specified for the zone district in which the lot is located, the owner obtains an authorized variance pursuant to Section 16-62 of this Chapter which will require all proposed development to conform as closely as possible to all zone district dimensional requirements.

(Prior code 17.05.040; Ord. 13-2000 §1)

**Sec. 16-125.5. Merger of nonconforming lots.**

The following tracts or nonconforming lots shall be deemed to merge, as a matter of law, with an adjoining tract or lot that is held under common ownership:

- (1) Any tract that does not meet the definition of lot, as described in Section 16-4, except where the reason that the tract does not meet the definition of lot results from an eminent domain action by an entity possessing such authority.
- (2) Any combination of tracts or lots upon which a building has been built that encroaches upon the lot line (front, rear or side) or a setback line for the applicable zone district.
- (3) Any combination of tracts or lots that lack access to a public street or right-of-way.

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### ARTICLE VII Nonconformities

(Ord. 9-2004 §3)

#### **Sec. 16-126. Prohibition.**

No lot or parcel that conforms to the dimensional requirements for the zone district in which it is located shall be subdivided or reduced in size in such a way as to make it nonconforming or result in the creation of one (1) or more nonconforming lots, or cause any building, structure, space or use to become nonconforming.

(Ord. 13-2000 §1)

#### **Secs. 16-127—16-140. Reserved.**

## **ARTICLE VIII District Regulations**

[Sec. 16-141. Intent generally.](#)

[Sec. 16-142. R-1 Low-Density Residential District - intent.](#)

[Sec. 16-143. R-1 permitted uses.](#)

[Sec. 16-144. R-1 special uses.](#)

[Sec. 16-145. R-2 General Residential District - intent.](#)

[Sec. 16-146. R-2 permitted uses.](#)

[Sec. 16-147. R-2 special uses.](#)

[Sec. 16-148. R-3 High-Density Residential - intent.](#)

[Sec. 16-149. R-3 permitted uses.](#)

[Sec. 16-150. R-3 special uses.](#)

[Secs. 16-151—16-152. Reserved.](#)

[Sec. 16-153. B-1 General Business District - intent.](#)

[Sec. 16-154. B-1 permitted uses.](#)

[Sec. 16-155. B-1 special uses.](#)

[Sec. 16-156. B-1 uses not permitted.](#)

[Sec. 16-156.5. B-1 OT Mixed Use Designation.](#)

[Sec. 16-157. B-2 Highway Business District - intent.](#)

[Sec. 16-158. B-2 permitted uses.](#)

[Sec. 16-159. B-2 special uses.](#)

[Sec. 16-160. I-1 Light Industrial District - intent.](#)

[Sec. 16-161. I-1 permitted uses.](#)

[Sec. 16-162. I-1 special uses.](#)

[Sec. 16-163. I-1 uses not permitted.](#)

[Sec. 16-164. S-1 Special Recreational District - intent.](#)

[Sec. 16-165. S-1 permitted uses.](#)

[Sec. 16-166. S-1 special uses.](#)

[Sec. 16-167. Airport Protection Overlay District \(APO\).](#)

[Sec. 16-168. Definitions.](#)

[Sec. 16-169. Nonconforming structures or uses.](#)

[Sec. 16-170. Development standards/procedures.](#)

[Sec. 16-171. Reserved.](#)

[Sec. 16-172. Old Town Overlay District.](#)

[Secs. 16-173—16-190. Reserved.](#)



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### ARTICLE VIII District Regulations

#### **Sec. 16-141. Intent generally.**

It is the intent of this Article and the policy of this Article that if any use or class of use is not specifically allowed in a district as set forth below, it shall be prohibited in that district.

(Prior code 17.06.010)

#### **Sec. 16-142. R-1 Low-Density Residential District - intent.**

The R-1 Low-Density Residential District is established as a district in which the principal use of land is to be single-family detached dwellings. It is the intention of these regulations to discourage any use which would be detrimental to the low-density residential nature of the areas included within the district.

(Prior code 17.06.020, 17.06.021; Ord. 11-2001 §4)

#### **Sec. 16-143. R-1 permitted uses.**

Within the R-1 Low-Density Residential District, a building or land shall be used only for the following purposes:

- (1) Single-family dwellings, inclusive of foster care homes, but excluding mobile homes.
- (2) Incidental or accessory signs.
- (3) Temporary construction signs located at least ten (10) feet inside any lot line, and temporary construction offices for a period not to exceed six (6) months.
- (4) Customary incidental home occupations, subject to all conditions contained in this Chapter.
- (5) Vacation rentals, provided all applicable taxes and fees have been paid.

(Prior code 17.06.022; Ord. 11-2001 §4; Ord. 25 §2, 2010; Ord. 30 §2, 2010)

#### **Sec. 16-144. R-1 special uses.**

The following uses require a special use permit:

- (1) Duplex dwellings.
- (2) State-licensed group homes; except that such group homes shall not be located within seven hundred and fifty (750) feet of another such group home unless the Board of Trustees makes a special finding of substantial public need.
- (3) Cemeteries.
- (4) Churches or similar places of worship, including parish houses and parsonages, but not convents or dormitories;
- (5) Public golf courses, parks, playgrounds, swimming pools and community centers, not-for-profit museums, country clubs and civic clubs and lodges operated on a noncommercial or nonprofit basis for recreational purposes only.
- (6) Schools.
- (7) Public utility buildings and facilities if such use is essential for the service of the immediate area and provided that:

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- a. All buildings shall be located at least twenty-five (25) feet from any lot line;
  - b. Fences or other appropriate safety devices are installed to protect the public safety and welfare;
  - c. No vehicles or equipment are stored, maintained or repaired on the premises;
  - d. All structures are in keeping with the residential character of the neighborhood; and
  - e. Adequate landscaping, screening or buffering shall be provided to ensure compatibility with the neighborhood.
- (8) Properly licensed child day care homes may be approved administratively subsequent to posting the property for seventy-two (72) hours and notifying adjoining neighbors with no opposition. If there is opposition and the applicant still wishes to pursue the special use, a properly noticed public hearing before the Board of Trustees shall be required. A day care home may serve up to eleven (11) children under the age of eighteen (18) years, or eleven (11) adults.
- (9) Fire and police stations.
- (10) Bed-and-breakfast.
- (11) Medical or dental clinic, office or laboratory.
- (12) Accessory dwelling units associated with a primary single-family dwelling.

(Prior code 17.06.023; Ord. 18-1992 §1; Ord. 20-1994 §1; Ord. 11-2001 §5; Ord. 11-2002 §1; Ord. 12-2003 §2; Ord. 3-2006 §1; Ord. 4-2006 §1; Ord. 10-2007 §1; Ord. 14 §5, 2010; Ord. 30 §3, 2010)

#### **Sec. 16-145. R-2 General Residential District - intent.**

The R-2 General Residential District is established as a district in which the principal use of land is for residential purposes. A greater coverage of lot area and higher densities of land use are encouraged in this district. It is the intention of these regulations to discourage any use which would be detrimental to the residential nature of the areas included within the district.

(Prior code 17.06.030, 17.06.031)

#### **Sec. 16-146. R-2 permitted uses.**

Within the R-2 General Residential District, a building or land shall be used only for the following purposes:

- (1) All those uses listed as permitted uses in the R-1 Low-Density Residential District; and
- (2) Duplex dwellings.

(Prior code 17.06.032; Ord. 11-2001 §6)

#### **Sec. 16-147. R-2 special uses.**

The following uses require a special use permit:

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- (1) All those uses listed as requiring a special use permit for the R-1 Low-Density Residential District;
- (2) Public libraries;
- (3) Hospitals and medical or dental clinic, office or laboratory, but not veterinary hospitals or clinics;
- (4) Multifamily dwellings.

(Prior code 17.06.033; Ord. 11-2001 §6; Ord. 3-2006 §1; Ord. 10-2007 §1; Ord. 14 §6, 2010)

#### **Sec. 16-148. R-3 High-Density Residential - intent.**

The R-3 High-Density Residential District is established as a district to provide for single-family and multifamily residential development. It is the intention of these regulations to discourage any use which would be detrimental to the residential nature of areas included within this district.

(Prior code 17.06.040, 17.06.041)

#### **Sec. 16-149. R-3 permitted uses.**

Within the R-3 High-Density Residential District, a building or land shall be used only for the following purposes:

- (1) All those uses listed as permitted uses in R-1 and R-2 districts; and
- (2) Multifamily dwellings including apartments, rowhouses, townhouses and condominiums.

(Prior code 17.06.042)

#### **Sec. 16-150. R-3 special uses.**

The following uses require a special use permit:

- (1) Mobile home parks, provided that:
  - a. The location shall be suitable for residential use. No part of any mobile home park shall be used for nonresidential purposes, except such uses as are required for the maintenance and management of the park to include laundry facilities, recreation buildings and accessory buildings.
  - b. The minimum area of any mobile home park is one (1) acre. The maximum area for any mobile home park is six (6) acres.
  - c. The soil, groundwater level, drainage, rock formation and topography shall not create hazards to the property or to the health and safety of occupants.
  - d. The minimum site size for individual mobile home sites shall be three thousand (3,000) square feet, with a width at building line of at least thirty-five (35) feet, exclusive of common driveway. If a mobile home subdivision is established, then the provisions of Chapter 17 of this Code shall apply.
  - e. The maximum density shall be twelve (12) mobile home sites per acre, and each mobile home shall be situated on a mobile home site.

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- f. Each mobile home site shall abut a driveway within the mobile home park. The driveway shall consist of two (2) inches of asphalt over four (4) inches of base material. The design of any driveway shall provide for adequate accessibility for emergency vehicles and shall be subject to approval as a part of the review process. All driveways shall be adequately maintained by the mobile home park owner or operator to original design standards. Snow removal shall be the responsibility of the mobile home park owner or operator.
- g. Two (2) off-driveway parking spaces with not less than four (4) inches of crushed stone or other suitable material on a well-compacted subbase shall be provided for each mobile home space. Required parking spaces may be included within the three thousand (3,000) square feet required for each mobile home space.
- h. No mobile home shall be located closer than twenty (20) feet to the exterior boundary of the park or a bounding street or highway right-of-way. Accessory buildings used for laundry, recreation or storage purposes shall be located no closer than forty (40) feet to the boundary or right-of-way. Each mobile home shall be situated so that the mobile home hitch is fronting on and directly accessible to a conforming mobile home park driveway.
- i. Not less than eight percent (8%) of the gross mobile home park area shall be devoted to open space which may be devoted to recreation facilities, generally provided in a central location.
- j. The developer shall provide for the parking and storage of recreational vehicles. Recreational vehicles are defined to include motor homes, travel trailers, boats, boat trailers, snowmobiles, snowmobile trailers, camper trailers, detached camper shells, antique vehicles, motorcycle trailers and any other vehicle or item of tangible personal property whose principal purpose is for recreation.
- k. Each mobile home park owner or operator shall maintain an accurate register. The register shall contain the following information: name of owner and/or occupant; make, model and registration number of the mobile home; and date of arrival and departure of the mobile home. These records shall be available for inspection by the Town Administrator and the County Assessor's office.
- l. Each mobile home site shall be clearly numbered with letters not less than three (3) inches in height that are clearly visible from the driveway.
- m. The storage, collection and disposal of solid waste in the mobile home park shall be conducted so as to create no unsightliness, health hazards, rodent harborage, insect breeding areas, accident hazards and pollution.
- n. Plans clearly indicating the developer's intention to comply with the provisions of this Chapter concerning mobile home parks shall be submitted to and approved by the Town Administrator prior to submission to the Board of Trustees for consideration of granting a special use permit under the provisions of this Chapter. Plans shall include:
  - 1. The area to be used for the mobile home park;
  - 2. The ownership and use of neighboring properties;
  - 3. All proposed entrances, exits, driveways, open space areas and service buildings;
  - 4. The proposed plan for water supply and sewage disposal (adequate space for lines and easements shall be provided); and
  - 5. The location and size of individual mobile home sites including a sketch of the proposed location of the mobile homes on the mobile home sites.
- o. Any expansion of mobile home parks in existence as of the effective date of the ordinance codified in this Chapter shall comply with the provisions of this Chapter concerning mobile home parks.

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- p. Adequate screening, such as a fence or buffer strip of vegetation at least six (6) feet in height, shall be located along all sides of the mobile home park, but shall not extend beyond the established setback line along any street. This requirement may be modified by the Board of Trustees where adequate buffering exists in the form of vegetation or terrain.
  - q. Where compliance with the provisions of this Chapter having to do with mobile home parks results in practical difficulties or unnecessary hardships, a variance may be granted by the Board of Trustees according to the provisions of this Chapter.
- (2) Laundromats, and retail grocery stores not exceeding two thousand five hundred (2,500) square feet in size, but allowing no secondary or coincidental uses.
- (3) Radio and television transmitting stations and studios, provided that:
  - a. Such facilities shall be housed in structures which are in keeping with the character of the residential neighborhood;
  - b. All structures shall be located at least thirty-five (35) feet from any lot line; and
  - c. Adequate landscaping, screening and buffering shall be provided to ensure compatibility with the neighborhood.
- (4) Public utility buildings and facilities if such use is essential for the service of the immediate area, and provided that:
  - a. All buildings shall be located at least twenty-five (25) feet from any lot line;
  - b. Fences or other appropriate safety and security devices are installed to protect the public safety and welfare;
  - c. No vehicles or equipment are stored, maintained or repaired on the premises;
  - d. All structures are in keeping with the residential character of the neighborhood; and
  - e. Adequate landscaping, screening and buffering shall be provided to ensure compatibility with the neighborhood.
- (5) Churches or similar places of worship, including parish houses and parsonages.
- (6) Public golf courses, parks, playgrounds, swimming pools and community centers, not-for-profit museums, country clubs, and civic clubs and lodges operated on a noncommercial or nonprofit basis for recreational purposes only.
- (7) Schools and dormitories.
- (8) Properly licensed child day care homes may be approved administratively subsequent to posting the property for seventy-two (72) hours and notifying adjoining neighbors with no opposition. If there is opposition and the applicant still wishes to pursue the special use, a properly noticed public hearing before the Board of Trustees shall be required. A day care home may serve up to eleven (11) children under the age of eighteen (18) years, or eleven (11) adults.
- (9) Hospitals and medical clinics, but not veterinary hospitals or clinics.
- (10) Public libraries.
- (11) Fire and police stations.
- (12) Bed-and-breakfast.
- (13) Accessory dwelling units associated with a primary single-family dwelling.
- (14) Hospitals and medical or dental clinic, office or laboratory, but not veterinary hospitals or clinics.

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(Prior code 17.06.043; Ord. 11-2001 §6; Ord. 11-2002 §2; Ord. 12-2003 §3; Ord. 3-2006 §1; Ord. 4-2006 §1; Ord. 10-2007 §1; Ord. 14 §8, 2010; Ord. 30 §4, 2010)

#### **Secs. 16-151—16-152. Reserved.**

#### **Sec. 16-153. B-1 General Business District - intent.**

The B-1 General Business District is established as a district in which the principal use of land is for retail sales and services to the consumer. It is the intention of these regulations to encourage the development and orderly expansion of the district with such uses and in such a manner as to provide ample parking and a minimum of traffic congestion.

(Prior code 17.06.060, 17.06.061)

#### **Sec. 16-154. B-1 permitted uses.**

Within the B-1 General Business District a building or land shall be used only for the following purposes:

- (1) Businesses engaged in the retail sale of goods to the general public, but excluding those retail establishments requiring unenclosed storage.
- (2) Businesses or institutions, either public or private, engaged in providing services to the general public but excluding those establishments requiring unenclosed storage.
- (3) Offices; public, municipal, professional and private.
- (4) Restaurants with or without bar, but excluding drive-in restaurants.
- (5) Fire and police stations.
- (6) Automobile parking lots and structures, either public or private.
- (7) Customary accessory uses and structures when located on the same lot or abutting lot of same ownership as the main structure, excluding, however, unenclosed storage.
- (8) Public utility distribution lines, transmission lines and telephone exchanges, but no service or storage yards.
- (9) Fabricating and assembly or processing establishments of small size (five [5] employees or less), such as bakeries, dry cleaners, laundries, woodworking shops, cabinet shops, upholstery shops, printing plants incidental to newspaper offices, publishing establishments and millinery shops.
- (10) Parks for public use.
- (11) Advertising signs, business signs and outdoor advertising signs.
- (12) Civic organizations, private clubs, private lodges and fraternal organizations.
- (13) Not-for-profit or for-profit museums, and municipally owned assembly halls and community centers.
- (14) Retail greenhouses and nursery, garden and landscape supply stores, inclusive of associated outdoor storage.
- (15) Retail display in association with a permitted retail use.
- (16) Enclosed storage.

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(Prior code 17.06.062; Ord. 11-2001 §8; Ord. 11-2002 §3; Ord. 6-2003 §2)

#### **Sec. 16-155. B-1 special uses.**

The following uses require a special use permit:

- (1) Establishments providing recreational services to the general public.
- (2) Establishments providing transportation for the general public, including taxi stands and bus terminals.
- (3) Hotels, motels and other forms of public lodging and boarding.
- (4) Schools.
- (5) Hospitals.
- (6) Apartment units contained within a business or commercial building jointly occupied by a use permitted within the zone district (i.e., a mixed-use building) and accessory dwelling units.
- (7) Cocktail lounges, taverns and bars.
- (8) Public libraries.
- (9) Churches or similar places of worship and customary accessory uses.
- (10) Auction houses, flea markets and similar uses conducting business in an enclosed structure.
- (11) Gasoline or filling stations meeting all conditions of Section 16-241
- (12) Veterinary clinics not providing overnight housing for animals.
- (13) Above-ground bulk storage tanks for nonflammable and/or noncombustible gases or liquids which are constructed and sited in compliance with the Town's fire code and all applicable standards and regulations published by the National Fire Protection Association.
- (14) Screened storage.
- (15) Medical or dental clinic, office or laboratory.
- (16) Tire or windshield repair or replacement operations, muffler and exhaust system repair and fabrication operations and oil or vehicular fluid change operations.

(Prior code 17.06.063; Ord. 10-1994 §1; Ord. 8-2000 §1; Ord. 11-2001 §8; Ord. 6-2003 §3; Ord. 12-2003 §4; Ord. 8-2004 §1; Ord. 3-2006 §1; Ord. 10-2007 §1; Ord. 14 §5, 2010; Ord. 26 §1, 2010)

#### **Sec. 16-156. B-1 uses not permitted.**

In furtherance of the policy of this Chapter prohibiting uses and classes of uses not specifically allowed hereinabove as a permitted use or special use, but not by way of limitation, the following uses shall not be permitted in the B-1 General Business District:

- (1) Auto and mechanized equipment sales yards, including truck and trailer open sales yards.
- (2) Farm machinery and equipment open sales yards.
- (3) Auto and vehicular equipment repair and paint shops; provided that such prohibition shall not prohibit tire or windshield repair or replacement operations, muffler and exhaust system repair and fabrication operations, or oil or vehicular fluid change operations, which may be permitted as special uses pursuant to Section 16-155

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- (4) Mobile home and travel trailer open sales yards.
- (5) Veterinary hospitals and kennels.
- (6) Uses requiring open storage of goods, materials, equipment, parts or machinery.
- (7) Uses pertaining to the keeping, care or sale of domestic farm animals.

(Prior code 17.06.064; Ord. 10-1994 §2; Ord. 6-2003 §4; Ord. 26-2010 §2)

#### **Sec. 16-156.5. B-1 OT Mixed Use Designation.**

Lots contained within a B-1 Zoning District that are designated as Buena Vista Old Town (OT) lots shall be overlaid with a mixed use designation allowing for both residential and commercial use. The character of the local community should be reflected in any use made of such lots and therefore, lots zoned B-1 which are designated as Old Town (OT) lots located west of Highway 24 in the Town shall be permitted to make any permissive or special use allowed for lots zoned B-1, R-2 and R-1. Lots designated as B-1 Old Town (OT) lots located east of Highway 24 in the Town shall be permitted to make any permissive or special uses allowed for B-1, R-3 and R-1 Zoning. This overlay shall not apply to any lots that abut East Main Street.

(Ord. 16-2005 §5)

#### **Sec. 16-157. B-2 Highway Business District - intent.**

The B-2 Highway Business District is established as a district in which the principal use of land is for retail sales and services to the motorizing public, and for other uses not requiring a centralized location, but which do require major highway frontage, comparatively large lot area and open sales yards or unenclosed storage areas. It is the intention of these regulations to encourage the orderly development and expansion of the district with such uses and in such a manner as to provide ample parking space and a minimum of traffic congestion.

(Prior code 17.06.070, 17.06.071; Ord. 6-2003 §5)

#### **Sec. 16-158. B-2 permitted uses.**

Within the B-2 Highway Business District, a building or land shall be used only for the following purposes:

- (1) All uses listed as permitted uses in the B-1 General Business District.
- (2) Automobile leasing or sales, including open sales lots, but no unenclosed storage of inoperable or wrecked cars.
- (3) Automobile repair and paint shops conducted within a completely enclosed building, excluding unenclosed storage.
- (4) Equipment sales, including open sales yards, but no unenclosed storage of inoperable or wrecked machinery and equipment.
- (5) Motels, hotels, motor courts or other establishments providing lodging for the general public.
- (6) Establishments providing transportation for the general public, including taxi stands and bus terminals.



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- (7) Restaurants, including drive-in restaurants, with or without bar.
- (8) Public libraries.
- (9) Gasoline or filling stations meeting all conditions of Section 16-241
- (10) Medical or dental clinic, office or laboratory.

(Prior code 17.06.072; Ord. 16-2002 §1; Ord. 6-2003 §6; Ord. 14 §3, 2010)

#### **Sec. 16-159. B-2 special uses.**

The following uses require a special use permit:

- (1) Establishments providing recreational services to the general public.
- (2) Cocktail lounges, taverns and bars.
- (3) Apartment units contained within a building jointly occupied by a business or commercial use permitted within the zone district (i.e., a mixed use building) and accessory dwelling units.
- (4) Veterinary clinics or hospitals and kennels.
- (5) Hospitals.
- (6) Schools.
- (7) Auction houses, flea markets and similar uses conducting business in an enclosed structure.
- (8) Shopping centers.
- (9) Above-ground bulk storage tanks for nonflammable and/or noncombustible gases or liquids which are constructed and sited in compliance with the Town's fire code and all applicable standards and regulations published by the National Fire Protection Association.
- (10) Screened storage.
- (11) Churches or similar places of worship and customary accessory uses.

(Prior code 17.06.073; Ord. 8-2000 §2; Ord. 11-2001 §8; Ord. 6-2003 §7; Ord. 12-2003 §5; Ord. 8-2004 §2; Ord. 3-2006 §1; Ord. 10-2007 §1; Ord. 14 §4, 2010)

#### **Sec. 16-160. I-1 Light Industrial District - intent.**

The I-1 Light Industrial District is established as a district in which the principal use of land is for the fabrication, assembly and manufacture of goods and materials in conjunction with related retail and wholesale activities. It is the intention of these regulations to encourage the development and orderly expansion of the district with such uses and in such a manner as to avoid dangerous, noxious or unsightly land uses.

(Prior code 17.06.080, 17.06.081)

#### **Sec. 16-161. I-1 permitted uses.**

Within the I-1 Light Industrial District a building or land shall be used only for the following purposes:

- (1) Wholesale distributing houses, warehouses and mini-warehouses.

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- (2) Facilities for the manufacture, assembly or processing of goods and materials, excluding those listed in Section 16-163
- (3) Railroad transshipment facilities, including those for sand, gravel or other minerals, except coal.
- (4) Gasoline or filling stations meeting all conditions of Section 16-241
- (5) Automobile parking lots and structures, either public or private.
- (6) Customary accessory uses and structures to include warehouses and storage buildings when located on the same lot or abutting lot of same ownership as the main structure excluding, however, open storage.
- (7) Public utility distribution lines, transformer stations, transmission lines and towers, water tanks and towers, and telephone exchanges.
- (8) Fire and police stations.
- (9) Advertising signs, business signs and outdoor advertising signs.
- (10) Open sales yards for the retail sale of automobiles, trucks, boats, trailers, recreational vehicles, farm machinery and equipment, but excluding the unenclosed storage of junked vehicles or wrecked or inoperable equipment or materials.
- (11) Offices; public, municipal, professional and private.
- (12) Enclosed storage.

(Prior code 17.06.082; Ord. 6-2003 §8)

#### **Sec. 16-162. I-1 special uses.**

The following uses require a special use permit:

- (1) Businesses engaged exclusively in the retail sale of goods to the general public.
- (2) Businesses engaged exclusively in providing services to the general public.
- (3) Restaurants, including drive-in restaurants, with or without bar.
- (4) Industrial, trade or vocational schools and similar uses.
- (5) Open yards for the storage or sale of lumber and building materials.
- (6) Above-ground bulk storage tanks for gases and liquids of any type.
- (7) Dormitories and accessory dwelling units.
- (8) Screened storage.

(Prior code 17.06.083; Ord. 19, 1996 §1; Ord. 8-2000 §3; Ord. 11-2001 §8; Ord. 12-2002 §3; Ord. 6-2003 §9; Ord. 12-2003 §6; Ord. 3-2006 §1; Ord. 10-2007 §1)

#### **Sec. 16-163. I-1 uses not permitted.**

In furtherance of the policy of this Chapter prohibiting uses and classes of uses not specifically allowed hereinabove as a permitted use or special use, but not by way of limitation, the following uses shall not be permitted in the I-1 Light Industrial District:

- (1) Cement, lime, gypsum, rockwall or plaster of Paris manufacture.

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- (2) Acid manufacture.
- (3) Explosives manufacture or storage, except for above-ground bulk tank storage of gases or liquids by special use permit.
- (4) Glue manufacture, fat rendering, distillation of bones, fertilizer manufacture.
- (5) Petroleum or petroleum products refining.
- (6) Milling or smelting of ores.
- (7) Garbage, offal or dead animal reduction or dumping.
- (8) Stockyards, feeding yards or slaughter of animals.
- (9) Manufacture of liquid petroleum gases or petroleum products.
- (10) Other uses similar to or like the above.

(Prior code 17.06.084; Ord. 19, 1996 §2; Ord. 8-2000 §4)

#### **Sec. 16-164. S-1 Special Recreational District - intent.**

The S-1 Special Recreation District is established as a district to provide for community recreation. It is the intent of these regulations to discourage any use which would be detrimental to the recreational value of the areas to be included within this district.

(Prior code 17.06.090, 17.06.091)

#### **Sec. 16-165. S-1 permitted uses.**

Within the S-1 Special Recreation District, a building or land shall be used only for the following purposes:

- (1) Active and passive recreation facilities, including but not limited to rodeo grounds and facilities, athletic fields, water sports facilities and temporary special event camping areas.
- (2) Short-term parking and/or storage facilities for recreational/camping vehicles.
- (3) Museums, noncommercial historical structures and displays and nonprofit tourist/ visitor-oriented information facilities (such as a visitor information center).

(Prior code 17.06.092; Ord. 11-2001 §9; Ord. 2-2004 §1; Ord. 6 §1, 2013)

#### **Sec. 16-166. S-1 special uses.**

The following uses require a special use permit:

- (1) Motor sports facilities.
- (2) Target ranges and other facilities utilized for the discharge of firearms.
- (3) Archery facilities.

(Prior code 17.06.093; Ord. 11-2001 §9; Ord. 3-2006 §1; Ord. 10-2007 §1)

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**Sec. 16-167. Airport Protection Overlay District (APO).**

- (a) Purpose. The purpose of the APO District is to minimize exposure of residential and other sensitive land uses to aircraft and their potential impacts, including noise, to minimize risks to public safety from aircraft accidents, and to discourage traffic congestion and incompatible land uses proximate to, and within, the APO District.
- (b) Warning and Disclaimer of Liability. The degree of protection provided by this Section is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study and does not imply that areas outside the airport influence will be totally free from potential safety issues associated with aircraft activity. This Section shall not create a liability on the part of, or cause an action against, the Town or any officer or employee thereof, for any damages that may result directly or indirectly from the reliance on this Section.

(Ord. 9 § 1, 2014)

**Editor's note**— Ord. 9 § 1, 2014, repealed the former § 16-167, and enacted a new section as set out herein. The former § 16-167 pertained to similar subject matter and derived from Ord. 3-1991 § 2

**Sec. 16-168. Definitions.**

APO means Airport Protection Overlay

FAA means Federal Aviation Administration

FAR means Federal Aviation Regulations

Primary Surface means the surface longitudinally centered on the runway. When the runway has a specifically prepared hard surface, the primary surface extends two hundred (200) feet beyond each end of the runway. The width of the primary surface is five hundred fifty (550) feet.

Runway Protection Zone (RPZ) means the land area that lies under the approach surface from the end of the primary surface for a distance of one thousand feet for all runways.

Noise Attenuation means the use of materials in the construction of new or redeveloped buildings in such a manner that aircraft noise is attenuated by the structure to an interior level that reasonably minimizes adverse impacts on the health, safety, and general welfare of the structure's residents.

(Ord. 9 § 1, 2014)

**Editor's note**— Ord. 9 § 1, 2014, repealed the former § 16-168, and enacted a new section as set out herein. The former § 16-168 pertained to APO intent and derived from Ord. 3-1991 § 2

**Sec. 16-169. Nonconforming structures or uses.**

- (a) These regulations shall not require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which began prior to the effective date of this Section and is diligently prosecuted; provided, however, that when the nonconforming structure is destroyed or damaged to the extent of more than fifty percent (50%) of the appraised value of the nonconforming structure, any reuse, reconstruction or replacement shall be deemed a new use and shall be subject to the applicable provisions the Town Code, including compliance with the APO District provisions of the Zoning Chapter.

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- (b) The owner of any nonconforming structure or object of natural growth is hereby required to permit the installation, operation and maintenance thereon of such markers and lights as required by the FAR Part 77, to indicate to the operators of aircraft in the vicinity of the airport the presence of such nonconforming structures or objects of natural growth. Such markers and lights shall be installed, operated, and maintained at the expense of the owner of such nonconforming structure or object of natural growth.

(Ord. 9 § 1, 2014)

**Editor's note**— Ord. 9 § 1, 2014, repealed the former § 16-169, and enacted a new section as set out herein. The former § 16-169 pertained to permitted uses within an APO district and derived from Ord. 3-1991 § 2; and Ord. 17-2003 § 1

#### **Sec. 16-170. Development standards/procedures.**

- (a) General Standards. In addition to the Town's building codes and related regulations, all land use applicants presenting proposals in the APO district shall comply with the following requirements:
  - (1) Federal Aviation Regulations Part 77.
  - (2) Noise attenuation in building design shall be provided by the applicant.
  - (3) An aviation easement shall be provided.
- (b) Use Limitations. No use may be made of land within the APO District in such a manner as to:
  - (1) Create electrical interference with radio communication between the airport and aircraft;
  - (2) Make it difficult for pilots to distinguish between airport lights and other lights;
  - (3) Cause glare directed skyward in the direction of aircraft so as to interfere with air traffic;
  - (4) Impair visibility in the vicinity of the airport;
  - (5) Attract a collection of birds reasonably expected to interfere with aircraft or the use of the airport; or
  - (6) Otherwise endanger the landing, taking off, or maneuvering of aircraft at the airport or in the vicinity of the airport.
- (c) Height Limitations. Height limitations within the APO District, except as otherwise provided in this Section, are subject to the limitation of the district within which the property is located. No structure or object of natural growth shall be constructed, erected, altered or permitted to grow or to be maintained in excess of height limits for the applicable underlying zone district, or the height limitation set forth herein, whichever is lower.
- (d) Notice to FAA. Notice to the FAA in the form required by Section 77.7 of the FAR must be provided by the applicant for applications involving the following types of new construction or alteration:
  - (1) Any construction exceeding two hundred (200) feet in height.
  - (2) Any construction exceeding the height limitation established by the imaginary ceiling for the following slopes:
    - a. 100 to 1 for a horizontal distance of twenty thousand (20,000) feet from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than three thousand two hundred (3,200) feet in actual length, excluding heliports.

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- b. 50 to 1 for a horizontal distance of ten thousand (10,000) feet from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than three thousand two hundred (3,200) feet in actual length, excluding heliports.
  - c. 25 to 1 for a horizontal distance of five thousand (5,000) feet from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.
- (3) Or as otherwise required by FAR Part 77 (including without limitation FAR Section 77.9).
- (e) Runway Protection Zone. Except as otherwise provided in this Section, no use which would result in a man-made structure or natural object shall be permitted in the RPZ, unless expressly allowed by the FAA or otherwise approved by the FAA.
  - (f) Submittal Requirements. An application for new development, rezoning, or subdivision/resubdivision approval for land within the APO District shall include, in addition to any other submittal requirements herein, the following:
    - (1) An aviation easement signed by the landowner that acknowledges flight operations above the land, recorded in the office of the county clerk and recorder. The reception number or book and page of the recorded easement shall be noted on subsequent approved plans and plats involving the land.
    - (2) A study which shows compliance with the FAA, FAR Part 77, and if a plat is required, a plat note on the Final Plat stating that the plat is in compliance with FAR Part 77.
    - (3) Referral to the Central Colorado Regional Airport Manager and other affected reviewing agencies for review and comment.
  - (g) Review Procedure. Review for compliance with the requirements of the APO District code provisions shall follow the procedure for the review of the underlying application.

(Ord. 9 § 1, 2014)

**Editor's note**— Ord. 9 § 1, 2014, repealed the former § 16-170, and enacted a new section as set out herein. The former § 16-170 pertained to limitations within an APO District and derived from Ord. 3-1991 § 2; Ord. 11-2001 § 10; Ord. 17-2003 § 2; and Ord. 16 § 6, 2012.

#### **Sec. 16-171. Reserved.**

**Editor's note**— Ord. 9 § 1, 2014, repealed the former § 16-171, which pertained to APO District boundaries map and derived from Ord. 2-2000 § 1; and Ord. 17-2003 § 3.

#### **Sec. 16-172. Old Town Overlay District.**

The intent of the Old Town Overlay District is to preserve and protect the historic design of the Town and to create a compact, walkable and mixed-use downtown core area. Infill development is critical to ensuring retail and commercial vitality on Main Street by locating more residents within walking distance of services. Infill development maximizes the efficiency and effectiveness of existing infrastructure that the Town already pays to maintain. The Old Town Overlay District shall apply to all lots that were part of the original Town of Buena Vista Subdivision Plat.

(Ord. 5 §3, 2011)

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**Secs. 16-173—16-190. Reserved.**

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[Sec. 16-214. PUD agreement.](#)

[Sec. 16-215. PUD plan enforcement - modifications.](#)

[Secs. 16-216—16-230. Reserved.](#)

### **Sec. 16-191. Planned unit development (PUD) designation, purpose and objectives.**

- (a) The purpose of planned unit development (PUD) is to encourage innovation and flexibility in the development of land so as to promote variety in the type, design and layout of buildings; improve the integration, character and quality of land uses; promote the more efficient use of land and infrastructure while achieving compatibility of land uses; achieve economy in the delivery and maintenance of public services; and promote the preservation of open space and natural and scenic areas.



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- (b) PUD zoning or overlay designation may be applied for with regard to any contiguous land (disregarding intervening public streets or easements or other rights-of-way) located within any zone district. The decision to approve an area for PUD zoning or treatment shall at all times rest within the discretion of the Board of Trustees, and an application for PUD designation shall be denied where the particular proposal will not adequately satisfy or implement the purposes of this Article.

(Prior code 17.13.020; Ord. 11-2001 §11)

#### **Sec. 16-192. Zoning classification.**

PUD constitutes a zoning classification and is established by rezoning or overlaying the designation upon land within an existing or newly created zone district. Approval of a PUD shall be illustrated and its land area defined on the Town's Official Zone District Map. When an area that is already zoned is approved for a PUD overlay, e.g., "R-1 PUD," the underlying zone district's regulations shall remain intact; and in the event the PUD is not completed or is terminated, the underlying zone district regulations shall apply to and govern land uses and development in the subject area.

(Prior code 17.13.030; Ord. 11-2001 §11)

#### **Sec. 16-193. PUD plan - conformity with comprehensive plan.**

No land shall be designated PUD in the absence of a PUD plan, which plan shall set forth the written and graphic materials as described in this Article. All PUD plans must be in general conformity and consistent with the Town's comprehensive plan.

(Prior code 17.13.040; Ord. 11-2001 §11)

#### **Sec. 16-194. Subdivision and zoning regulations applicable - PUD plan.**

- (a) The subdivision regulations and zoning provisions of the Town shall apply to a PUD insofar as is consistent with these PUD regulations and with any specific zoning or subdivision requirements approved by the Board of Trustees at the time of zoning or platting the PUD in question; but to the extent that the zoning provisions or subdivision regulations conflict with these PUD regulations or with such specific zoning or subdivision requirements, the former shall not be applicable and the provisions of the PUD regulations and of such specific zoning or subdivision requirements shall control.
- (b) The approval of a PUD overlay/zoning shall be inseparable from a PUD plan, and a PUD shall not be established or approved without the simultaneous approval of a PUD plan. The approved PUD overlay/zoning and the approved PUD plan shall together establish and govern the land uses and development allowed within the PUD and shall supersede any other underlying zone district regulations.

(Prior code 17.13.050; Ord. 11-2001 §11)

#### **Sec. 16-195. Subdivision provisions modification authorized.**

It is recognized that the uniqueness of each proposal for a PUD requires that the specifications, standards and requirements for various facilities, including but not limited to streets, highways, alleys, curbs, gutters, sidewalks, street lights, parks, playgrounds and school grounds, may be subject to

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modification from the specifications, standards and requirements established in the subdivision regulations and the zoning ordinance of the Town for like uses in other zone districts. Exceptions for utilities, storm drainage, sewage collection and treatment and water supply and distribution are expressly prohibited. The Board of Trustees may, therefore, either at the time of zoning as a PUD or upon final platting under the Town's subdivision regulations, as requested by the applicant, modify the specifications, standards and requirements which would be otherwise applicable to the proposed development.

(Prior code 17.13.060; Ord. 11-2001 §11; Ord. 16 §2, 2010)

#### **Sec. 16-196. Compatibility of land use elements.**

It is recognized that certain individual land uses, regardless of their adherence to all the design elements provided for in this Chapter, might not exist compatibly with one another. Therefore, a proposed PUD shall be considered from the point of view of the relationship and compatibility of the individual elements of the plan, and no PUD shall be approved which contains incompatible elements.

(Prior code 17.13.070)

#### **Sec. 16-197. Overview of PUD procedure.**

Approval of a PUD shall be subject to the submission of a full and complete application, the payment of all review and approval fees, preliminary review by the Planning and Zoning Commission and final approval by written resolution by the Board of Trustees after a public hearing. All applicants for a PUD intending to subdivide or resubdivide land as part of the PUD plan shall concurrently submit and pursue a subdivision application as provided for in this Code. Review and submission requirements for a PUD incorporating the subdivision and resubdivision of land shall be construed and applied together with the subdivision processing requirements. Whenever the PUD and subdivision application procedures or requirements overlap, the overlapping procedures or requirements shall not be applied cumulatively, and the procedure or requirement pertinent to the PUD application shall supersede the subdivision procedure or requirement.

(Prior code 17.13.080; Ord. 11-2001 §11)

#### **Sec. 16-198. Site plan criteria; general requirements.**

The PUD shall meet the following site plan criteria, depicted on a site plan furnished by the developer, unless the applicant can demonstrate that one (1) or more of them is not applicable or that another practical solution has been otherwise achieved:

- (1) The PUD shall have an appropriate relationship to the surrounding area, with adverse effects on the surrounding area being minimized.
- (2) The PUD shall provide an adequate internal street circulation system designed for the type of traffic generated, safety, separation from living areas, convenience and access. Private internal streets may be permitted, provided that adequate access for police, fire and emergency protection is maintained; streets are named in a logical fashion to avoid confusion; and provisions for using and maintaining such streets are imposed upon the private users and approved by the Board of Trustees. Bicycle traffic shall be provided for if appropriate for the land use.

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- (3) The PUD shall provide parking areas adequate in terms of location, area, circulation, safety, convenience, separation and screening.
- (4) The PUD shall provide common open space adequate in terms of location, area and type of the common open space, and in terms of the uses permitted in the PUD. The PUD shall strive for optimum preservation of the natural features of the terrain.
- (5) The PUD shall provide for variety in housing types and densities, other facilities and common open space.
- (6) The PUD shall provide adequate privacy between dwelling units.
- (7) The PUD shall provide pedestrian ways adequate in terms of safety, separation, convenience, access to points of destination and attractiveness.

(Prior code 17.13.090)

#### **Sec. 16-199. Off-street parking.**

The number of off-street parking spaces for each use in a PUD shall be determined by the Board of Trustees through consideration of the following factors:

- (1) Estimated number of cars to be used by occupants of dwellings in the PUD;
- (2) Temporary and permanent parking needs of nondwelling uses;
- (3) Varying time periods of use whenever joint use of common parking areas is proposed; and
- (4) Parking and storage needs for recreational vehicles, including, but not necessarily limited to, camper shells, boats, travel trailers and snowmobiles.

(Prior code 17.13.110)

#### **Sec. 16-200. Building height.**

The maximum height of buildings may be increased above the maximum permitted for like buildings in other zone districts (not to exceed thirty-five [35] feet) by reference to the following characteristics of the proposed building:

- (1) Its geographic location;
- (2) The probable effect on surrounding slopes;
- (3) Unreasonable adverse visual effect on adjacent sites or other areas in the vicinity;
- (4) Potential problems for adjacent sites caused by shadows, loss of air circulation or loss of view;
- (5) Influence on the general vicinity, with regard to extreme contrast, vistas and open space;
- (6) Uses within the proposed building; and
- (7) Fire protection needs.

(Prior code 17.13.120)

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**Sec. 16-201. Minimum land area.**

The minimum size of land that may comprise a PUD shall be determined by the Board of Trustees on a case-by-case basis.

(Prior code 17.13.130)

**Sec. 16-202. Lot area and coverage, setbacks and clustering.**

The minimum lot areas and the minimum setback restrictions may be decreased below and the maximum lot coverages may be increased above those applicable to like lots and buildings in other zone districts to accommodate specific building types with unusual orientation on the lot or relationship between buildings. The averaging of lot areas shall be permitted to provide flexibility in design and to relate lot size to topography, but each lot shall contain an acceptable building site. The clustering of development with useable common open areas shall be permitted to encourage provision for and access to common open areas and to save street and utility construction and maintenance costs. Such clustering is also intended to accommodate contemporary building types which are not spaced individually on their own lots but share common side walls, combined service facilities or similar architectural innovations, whether or not providing for separate ownership of land and buildings. Architectural style of buildings shall not be the only basis for denying approval of a PUD application.

(Prior code 17.13.140)

**Sec. 16-203. Residential density.**

The overall average residential density shall be no greater than the maximum density for the particular area in the land use section of the Town's comprehensive plan. The overall average residential density shall be calculated by summing the number of residential dwelling units planned within the boundary of the PUD and dividing by the total gross areas expressed in acres within the boundary of the PUD. Averaging and transferring of densities within the PUD shall be allowed upon a showing of conformance to the purpose of this Chapter through appropriate utilization of the area within the PUD to achieve high standards of design and habitability. The density of dwelling units as permitted herein, in any particular area, may be greater than the maximum permitted for a like use in other zone districts.

(Prior code 17.13.150)

**Sec. 16-204. Permitted uses.**

- (a) All permitted or conditional uses in any zone district may be allowed in a PUD subject to the provisions of Section 16-196. Without limiting the generality of the foregoing, the following uses, separate or in combination, may be permitted in a PUD:
- (1) Single-family and multifamily residential dwelling units in detached, semidetached or attached groups, or attached, clustered or multistoried structures, or any combination thereof;
  - (2) Sale or rental of goods or services;
  - (3) Recreational facilities;
  - (4) Public and private offices;
  - (5) Mobile home parks;

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- (6) Convention facilities;
  - (7) Restaurants;
  - (8) Lodging places, including motels, hotels, lodges and dormitories;
  - (9) Schools and other educational institutions;
  - (10) Churches and hospitals;
  - (11) Business and commercial uses;
  - (12) Industrial uses; and
  - (13) Any other uses shown to be appropriate.
- (b) The uses which shall be permitted in any particular PUD shall be limited to those specified in the PUD plan and the resolution approving the PUD.

(Prior code 17.13.160; Ord. 11-2001, §11)

#### **Sec. 16-205. Common open space.**

- (a) A minimum of twenty-five percent (25%) of the total area within the boundary of any PUD shall be devoted to usable and accessible common open space; provided, however, that the Board of Trustees may reduce such requirement if it finds that such decrease is warranted by the design of, and the amenities and features incorporated into, the plan and that the needs of the occupants of the PUD for common open space can otherwise be met in the proposed PUD and the surrounding area.
- (b) The common open space of a PUD may be owned and maintained by the property owners within the PUD, or by an organization chosen therefrom or thereby. In the event that the organization established to own and maintain common open space, or any successor organization, at any time after establishment of the PUD, fails to maintain the common open space in reasonable order and condition in accordance with the plan, the Board of Trustees may serve written notice upon such organization or upon the residents of the PUD, setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and the notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the date and place of a hearing thereon which shall be held within fourteen (14) days of the notice. At such hearing, the Board of Trustees may modify the terms of the original notice as to deficiencies and may give an extension of time within which they shall be cured.
- (c) If the deficiencies set forth in the original notice or in the modifications thereof are not cured within the thirty (30) days or any extension granted, the Town, in order to preserve the taxable values of the properties within the PUD and to prevent the common open space from becoming a public nuisance, may enter upon the common open space and maintain the same for a period of one (1) year. The entry and maintenance shall not vest in the public any rights to use the common open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of the year, the Board of Trustees shall, upon its initiative or upon the written request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the PUD, to be held by the Board of Trustees, at which hearing such organization or the residents of the PUD shall show cause why such maintenance by the Town shall not, at the election of the Board of Trustees, continue for a succeeding year. If the Board of Trustees determines that such organization is ready and able to maintain the common open space in reasonable condition, the Town shall cease to maintain such common open space at the end of the year. If the Board of Trustees determines that such organization is not ready and able to maintain the common open space in a reasonable condition, the Town may, in its discretion, continue to maintain the common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

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- (d) The cost of such maintenance by the Town shall include actual cost, plus overhead, plus twenty-five percent (25%), and shall be paid by the owners of properties within the PUD who have a right of enjoyment of the common open space, and any assessments unpaid for a period of sixty (60) days shall become a tax lien on the properties. The Board of Trustees shall file a notice of such lien in the office of the County Clerk and Recorder upon the properties affected by such lien within the PUD and shall certify such unpaid assessments to the Board of County Commissioners and the County Treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement and remittance of general property taxes.

(Prior code 17.13.170)

#### **Sec. 16-206. Application for PUD - PUD plan.**

- (a) An applicant shall process his or her application for PUD concurrently with any application for subdivision platting under Town ordinances as provided in Section 16-207. An applicant is advised to schedule a preapplication discussion with the Planning and Zoning Commission.
- (b) The plan shall show generally within the PUD where each type of use will be located and shall indicate the total acreage which will be devoted to each use. The precise location of use and the location of lots, blocks or other parcels within each area devoted to each use shall be shown as that area is thereafter subdivided and platted in accordance with the ordinances of the Town.
- (c) The permitted uses, conditional uses, uses allowed by Section 16-204, minimum lot area, maximum lot coverage, minimum setbacks, maximum height of buildings and all other use and occupancy restrictions applicable to any area zoned as PUD, shall only be those which are approved by the Board of Trustees at the time such area is so zoned.
- (d) The applicant shall initiate any request for a PUD in writing and shall include in such writing the following:
  - (1) A legal description of the area, a statement of the ownership of all interests in the property to be included in the PUD, the written consent of all of the owners and, upon request of the Board of Trustees, evidence of title in such quality as is acceptable to the Board of Trustees;
  - (2) A plan indicating the broad concept of the proposed development. Such plan shall indicate:
    - a. The maximum number of dwelling units proposed within the overall area;
    - b. The minimum acreage which will be dedicated to common open space;
    - c. The type of uses proposed and the acreage devoted to each use;
    - d. Major internal vehicular traffic circulation systems;
    - e. The acreage which will be dedicated for school sites or other public uses;
    - f. The general nature and location of commercial and industrial uses, if any, to be located in the PUD;
    - g. Provision for water, sewer, telephone, electricity, gas, cable television and other utilities;
    - h. Other restrictions proposed by the applicant such as building setbacks, height limits, access requirements and grade or slope restrictions to be applied to particular areas; and
    - i. How the common open space will be owned and maintained.
  - (3) A regional location map, on a scale of one (1) inch equalling not more than four hundred (400) feet, illustrating site boundaries, acreage, existing structures and existing zoning.

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- (4) A map, on a scale of one (1) inch equalling not more than one hundred (100) feet, illustrating site boundaries, acreage, existing structures and existing zoning.
- (5) A site plan map, on a scale of one (1) inch equalling not more than one hundred (100) feet, depicting site plan criteria which the applicant is required to meet in Section 16-198
- (6) A topographic map of the site, showing at a scale of one (1) inch equalling not more than one hundred (100) feet, with at least two (2) foot contour intervals for slopes, major vegetation elements, streams, rivers, ditches and areas subject to one hundred year flooding.
- (7) The written request shall additionally contain the following information:
  - a. An explanation of the objectives to be achieved by the PUD;
  - b. A development schedule indicating the approximate dates when construction of the various stages of the PUD can be expected to begin and be completed;
  - c. Copies of any special easements, covenants, conditions and restrictions which will govern the use or occupancy of the PUD; provided, however, that the applicant may impose additional covenants, conditions and restrictions on any particular area in connection with the platting of such areas;
  - d. A list of the owners of properties located within three hundred (300) feet of the boundaries of the PUD and their addresses (the property owners shall be notified by mail of the PUD application);
  - e. A statement and findings by a licensed engineer which shall provide evidence of the following as adequate to service the PUD:
    1. The proposed water distribution system,
    2. The proposed method of sewage collection,
    3. The general manner in which storm drainage will be handled, and
    4. The general manner in which provision will be made for any potential natural hazards in the area such as avalanche areas, landslide areas, floodplain areas and unstable soils;
  - f. Easements showing vested legal access for ingress and egress, if applicable;
  - g. Evidence that the PUD has been designed with consideration of the natural environment of the site and the surrounding area and does not unreasonably destroy or displace wildlife, natural vegetation or unique natural or historic features;
  - h. A statement of financial capability to timely and fully implement and complete the PUD.
  - i. Provisions for snow removal; and
  - j. A discussion of the major internal vehicular system and its relation to the existing system of streets, roads or highways.
- (e) The applicant may submit any other information or exhibits which he or she deems pertinent in evaluating his or her proposed PUD.

(Prior code 17.13.180; Ord. 11-2001 §11)

#### **Sec. 16-207. PUD/subdivision plat required.**

No PUD shall be approved absent the preparation and approval of a PUD/subdivision plat prepared in accordance with the plat requirements contained in the Town's Subdivision Code, and no development

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activity may occur within a PUD prior to the proper execution and recordation of the PUD/subdivision plat in the real property records of the County.

(Prior code 17.13.190; Ord. 11-2001 §11)

#### **Sec. 16-208. Public hearings.**

All public hearings required under this Article may be simultaneously noticed and conducted with any other public hearing as required or authorized under the Town's Subdivision Code.

(Prior code 17.13.200; Ord. 11-2001 §11)

#### **Sec. 16-209. Development schedule.**

- (a) The applicant must begin development of the PUD within one (1) year from the time of its final approval by the Board of Trustees; provided, however, that the PUD may be developed in stages. The applicant must complete the development of each stage and of the PUD as a whole substantially in conformity with the development schedule approved by the Board of Trustees.
- (b) If the applicant does not comply with the time limits imposed by Subsection (a) above, the Board of Trustees shall review the PUD and may revoke approval for the uncompleted portion of the PUD, require that the PUD be amended, or extend the time for completion of the PUD.
- (c) Each stage within a PUD shall be so planned and so related to existing surroundings and available facilities and services that failure to proceed to a subsequent stage will not have a substantial adverse impact on the PUD or its surroundings.
- (d) If a PUD contains nonresidential uses, they may be constructed in advance of residential uses if the Board of Trustees finds that such phasing is consistent with sound principles of orderly development and will have no substantial adverse effect on the quality or character of the PUD.

(Prior code 17.13.210)

#### **Sec. 16-210. Fee schedule for applications.**

The fee for PUD applications shall be the fee as set forth in Section 17-70 of the Buena Vista Subdivision Code for PUD development.

(Prior code 17.13.220; Ord. 6-1998, §11)

#### **Sec. 16-211. Planning Commission.**

- (a) The Planning Commission is responsible for initially investigating all PUD plans and accompanying information in detail to ensure conformity with the provisions of this Article. The commission shall recommend approval of the PUD application, disapproval or approval upon conditions reasonably related and necessary to preserve the intent and purposes of this Article. The only reason for withholding a PUD application from submission to the Board of Trustees shall be a failure of the application to conform to the requirements of this Article.
- (b) The Planning Commission shall upon rendering its decision on a PUD application promptly submit the application along with its conclusions, findings, recommendations and conditions to the Board of



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Trustees. The findings, conclusions, recommendations and conditions of the commission shall be advisory only and nonbonding on the Board of Trustees.

(Prior code 17.13.230; Ord. 11-2001 §11)

#### **Sec. 16-212. PUD approval procedure.**

- (a) A completed PUD application conforming to the requirements of this Article shall be submitted to the Town Administrator along with the appropriate application fee. No application shall be accepted, processed or scheduled for review unless and until it is complete and all necessary fees have been paid. The application shall be accompanied by not less than twenty (20) copies. In the event the Town must retain outside professional services to process or evaluate the application, the applicant shall bear the costs for same, inclusive of engineering, planning and legal fees.
- (b) After a PUD application has been determined to be complete and all fees have been paid, it shall promptly be referred to the Planning and Zoning Commission. The commission shall review and evaluate the application at a public meeting conducted not later than sixty (60) days from the date the application was deemed complete, or as soon thereafter as can be accommodated. The commission may continue the public meeting for up to forty (40) days in order to allow for the gathering and submission of additional information deemed necessary to complete the commission's review. The commission shall forward its recommendations and/or findings on the application in writing to the Board of Trustees after it has concluded its deliberations. The commission may recommend denial of the application, approval or approval subject to conditions.
- (c) The Board of Trustees shall consider the PUD application at a noticed public hearing conducted not later than thirty (30) days after the date upon which the board receives the recommendations and report of the Planning and Zoning Commission, or as soon thereafter as can be accommodated. Written notice of the subject matter and the time and place of the hearing shall be provided in accordance with the notice requirements for a site specific zoning map amendment contained in Section 16-6 of this Chapter. The hearing may be continued for up to forty (40) days to allow for the gathering and submission of additional information deemed necessary to complete the board's review, inclusive of referring the matter, or any particular item associated therewith, back to the Planning and Zoning Commission for additional study and recommendation. At the conclusion of the hearing and after discussion and deliberation, the board shall vote to approve, approve with conditions or deny the application, and shall thereafter direct staff to prepare a written resolution with supporting findings reflecting the board's decision for the board's review and approval at its next regularly scheduled meeting.
- (d) The time limits as set forth in this Section may be waived or extended upon the written request or consent of the applicant.
- (e) The burden to demonstrate the application's compliance with all applicable review criteria shall rest with the applicant.
- (f) No PUD designation shall be approved absent the applicant's full and timely payment of all fees assessed under this Chapter.

(Prior code 17.13.240; Ord. 11-2001 §11)

#### **Sec. 16-213. Form of PUD approval.**

All decisions of the Board of Trustees approving a PUD shall be in the form of a written resolution and contain, at a minimum, the information set forth below. No building permit may issue and no

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development activity may commence within the PUD area until the PUD approval and plat have been duly executed and recorded along with any necessary PUD agreement.

- (1) The density allocated to the property by type and number of units;
- (2) Approved uses on each development parcel or use areas within the PUD site;
- (3) Approved densities in total numbers of units for each development parcel identified;
- (4) Approved density transfers from one (1) parcel to another, if any;
- (5) The phasing and general timetable of development that shall ensure the logical and efficient provision of municipal services;
- (6) Specific conditions applied to the development of any parcels that, by their nature, are subject to special development constraints; and
- (7) Variations in any dimensional limitations expressed as either an allowable maximum or a specific maximum.

(Prior code 17.13.250; Ord. 11-2001 §11)

#### **Sec. 16-214. PUD agreement.**

For any PUD in which variances from underlying zoning requirements are granted, or for which public infrastructure or improvements are required, a written PUD agreement setting forth same and including all specific terms and conditions of approval shall be prepared and submitted by the applicant to the Town Administrator for approval by the Board of Trustees by written resolution. The PUD agreement shall be recorded in the real property records of the County Clerk and Recorder along with the PUD plat/map, and shall run and be a burden upon all lands within the PUD. The agreement shall also specify the amounts and type of financial security that must be posted by the PUD developer to ensure the timely and satisfactory installation of all public infrastructure and other improvements, inclusive of landscaping for common or public areas associated with the PUD. Financial security shall be posted prior to the issuance of any building permit or development activity within the PUD area and shall be in an amount not less than one hundred twenty-five percent (125%) of the estimated cost of the completion of all improvements; and may be provided by letter of credit, performance bond, cash escrow or other financial instrument as deemed acceptable by the Town. Upon the complete installation, inspection and acceptance of the improvements and/or infrastructure, all but twenty-five percent (25%) of the posted financial security shall be released, which twenty-five percent (25%) shall continue to remain posted as security to ensure that all improvements and infrastructure shall remain free of defects for a period of two (2) years after preliminary acceptance of same by the Town. The Town shall be entitled to draw on any posted financial security in order to complete, correct or repair any PUD infrastructure or improvement as called for in the PUD approval.

(Ord. 11-2001 §11)

#### **Sec. 16-215. PUD plan enforcement - modifications.**

- (a) Development of the area within a PUD shall be limited to the uses, densities, configuration and terms, elements and conditions contained within the approved PUD plan and development agreement, and may be enforced by the Town at law or equity. The configuration and mix of the units may be modified as provided for in this Article or in the PUD agreement, but no portion of the density allocation may be transferred to land not included in the PUD plan.

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- (b) In addition to any and all other remedies as available to the Town under law, the Town Administrator may serve a written notice on the PUD developer, or any landowner within the PUD, to appear before the Board of Trustees when reasonable grounds exist to believe that the PUD plan, or any part thereof, is not being adhered to. The Board of Trustees shall conduct a public hearing to determine the existence of any alleged failure or violation of the PUD approval, and may enter orders directing the correction of same.
- (c) All provisions of the PUD plan as finally approved run in favor of the residents, occupants and owners of the PUD, but only to the extent expressly provided in the plan and in accordance with the terms of the plan; and to that extent, the provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or in equity by such residents, occupants or owners acting individually, jointly or through an organization designated in the plan to act on their behalf.
- (d) All provisions of the PUD plan authorized to be enforced by the Town may be modified, removed or released by the Town subject to the following:
  - (1) No modification, removal or release of the provisions of the plan by the Town shall affect the rights of the residents, occupants and owners of the PUD to maintain and enforce those provisions in law or in equity; and
  - (2) No substantial modification, removal or release of the provisions of a PUD plan by the Town shall be permitted except upon a finding by the Board of Trustees, following a public hearing upon notice as required by this Article, that the modification, removal or release is:
    - a. Consistent with the efficient development and preservation of the entire PUD,
    - b. Does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across the street from the PUD or the public interest, and
    - c. Is not granted solely to confer a special benefit upon any person.
- (e) Residents and owners of land in the PUD may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove or release their rights to enforce the provisions of the plan; but no such action shall affect the right of the Town to enforce the provisions of the plan.
- (f) An insubstantial amendment to an approved final PUD plan may be authorized by the Town Administrator. However, insubstantial amendments may only be approved if they promote the terms, purposes and conditions of the original PUD plan and approval. The following shall not be considered an insubstantial amendment:
  - (1) A change in the use or character of the development.
  - (2) An increase or decrease by greater than three percent (3%) in the overall coverage of structures as originally approved within the PUD.
  - (3) Any amendment that substantially increases vehicle trip generation rates arising from the PUD, or the demand for public facilities.
  - (4) A reduction by greater than three percent (3%) of the originally approved common or public open spaces.
  - (5) A reduction by greater than one percent (1%) of the originally approved off-street parking or loading space.
  - (6) A change in the alignment or reduction in required pavement widths or rights-of-way for streets or easements.
  - (7) An increase or decrease of greater than two percent (2%) in the originally approved gross floor area of commercial buildings.
  - (8) An increase or decrease by greater than one percent (1%) in the originally approved residential density of the PUD.

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- (9) Any change which is directly contrary to a condition or representation of the PUD's original approval, or which requires granting a further variation from the PUD's approved use or dimensional requirements.
- (g) During the review of any proposed significant amendment to the PUD, the Town may require such new conditions of approval as are necessary to ensure that the development will be compatible with current community standards and regulations. This shall include, but not be limited to, applying to the portions of the PUD which have not obtained building permits, or are subject to the proposed amendment, any new community policies or regulations which have been implemented since the PUD was originally approved. An applicant may withdraw a proposed amendment at any time during the review process.

(Ord. 11-2001 §11)

**Secs. 16-216—16-230. Reserved.**

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[Sec. 16-231. Off-street parking requirements - intent.](#)

[Sec. 16-232. Off-street parking required.](#)

[Sec. 16-233. Location on other property.](#)

[Sec. 16-234. Extension of parking areas or spaces for commercial uses into residential districts.](#)

[Sec. 16-235. Parking for multifamily dwellings.](#)

[Sec. 16-236. No reduction in required off-street parking — variances.](#)

[Sec. 16-237. Mixed uses.](#)

[Sec. 16-238. Off-street loading and unloading space required.](#)

[Sec. 16-239. One principal building on a lot; exceptions and procedures.](#)

[Sec. 16-240. Visibility at intersections.](#)

[Sec. 16-241. Gasoline service or filling stations.](#)

[Sec. 16-242. Signs and outdoor advertising.](#)

[Sec. 16-243. Junkyards.](#)

[Sec. 16-244. Animals.](#)

[Sec. 16-245. Dimensional requirements.](#)

[Sec. 16-246. Mobile homes, trailer coaches and manufactured homes - placement.](#)

[Sec. 16-247. Skirting.](#)

[Sec. 16-248. Mobile home parks.](#)

[Sec. 16-249. Travel trailers.](#)

[Sec. 16-250. Inspection requirement.](#)

[Sec. 16-251. Manufactured homes.](#)

[Sec. 16-252. Telecommunications facilities.](#)

[Sec. 16-253. Measuring building height.](#)

[Sec. 16-254. Home occupations.](#)

[Sec. 16-255. Landscaping requirements.](#)

[Sec. 16-256. Storage standards and retail display.](#)

[Sec. 16-257. Accessory dwelling units \(ADUs\).](#)

[Sec. 16-258. Crossman's Addition lots.](#)

[Secs. 16-259—16-270. Reserved.](#)

**Sec. 16-231. Off-street parking requirements - intent.**

It is the intent of these regulations that adequate parking and loading facilities shall be provided on private property in order to promote the public safety, to lessen congestion in the public streets, and to

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help make possible the full use of existing streets for traffic movement unhindered by parking, loading and unloading maneuvers conducted within the public streets. To achieve these purposes, it is further intended that upon the erection of any building or the use of any lot, off-street parking and loading space shall be provided which is not less than the minimum required herein, subject to the obtaining of a variance pursuant to Section 16-46. Compliance with these requirements shall be a continuing responsibility.

(Prior code 17.07.010, 17.07.011)

**Sec. 16-232. Off-street parking required.**

- (a) Exemptions. Changes in use that do not expand the footprint of the site or the square footage of the structures are exempt from the standards of this Section, provided that the existing off-street parking remains unaltered.
- (b) Off-street vehicle storage or parking space shall be provided on every lot on which any of the following uses are hereafter established. The number of parking spaces provided shall be at least as great as the number specified below for the various identified uses. Each off-street parking space shall be provided with vehicular access to a street or alley and shall be designed or installed with adequate space for turning so that no vehicle shall be required to back into the street or alley, except from spaces used for single- or two-family dwellings. Spaces in garages shall count towards the requirements of this Section. Areas within a driveway or otherwise required to move cars in and out of a parking space shall not be used or considered to meet off-street parking requirements, except with regard to single- or two-family dwellings.
- (c) All off-street parking spaces shall be clearly marked, shall have a paved or other all-weather hardened surface of not less than nine (9) feet by (18) eighteen feet in size, and shall have unobstructed access to a street or alley. Hardened surface shall mean and include concrete, asphalt, pavers and/or compacted or compressed stone or gravel of sufficient size and depth so as to completely cover the surface of the ground and prevent the creation of ruts, potholes or mud. If the parking requirement is for five (5) or more spaces, the surface shall be concrete, asphalt or pavers.
- (d) Off-street parking zone standards by zone districts.
  - (1) General Business District (B-1). Parking requirements in this zone district are based on the linear frontage of the property. For every twenty-five (25) linear feet of frontage, the property will be required to provide one and one-half (1.5) spaces that shall be located on the rear or side of the building off of the alley. The parking requirement shall be rounded up at one-half (0.5) or more. For properties containing double frontage, the linear frontage calculation shall be based on the narrowest lot line. Properties that do not have an alley are exempt from the off-street parking requirement. Commercial properties that do not have an alley shall be required to install a bike rack in the front of the property to be exempt from the off-street parking requirement. A bike rack can be installed in front of any property to count towards one (1) of the required parking spaces. A minimum of thirty-six (36) inches of clearance must be maintained on any public walkway where a bike rack is installed. Single-family residences shall not be required to provide more than two (2) spaces per lot.
  - (2) Highway Business District (B-2), Industrial (I) and Special Recreational (S-1). Parking requirements for this zone district are based on Table 16.232 below. Definitions of all uses listed in the Table can be found in Section 16-4 of this Chapter. Areas used for mechanical space, bathrooms, accessory storage or part of a structure that are not used by the public or an employee shall not count towards the required parking area. A bike rack can be installed on any property to count towards two (2) of the required parking spaces. A minimum of thirty-six (36) inches of clearance must be maintained on any public walkway where a bike rack is installed. ADA parking spaces shall be installed per the amounts set forth in the adopted building code.

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Parking for special uses in these zone districts shall be determined during the review process pursuant to Section 16-61

Table 16.232  
Off-Street Parking  
B-2, I and S-1 Zone Districts

| <i>Uses</i>                           | <i>Required Off-Street Parking</i>                |
|---------------------------------------|---|
| Low intensity retail                  | 1 space per 500 sq. ft.                           |
| High intensity retail                 | 1 space per 400 sq. ft.                           |
| Low intensity office                  | 1 space per 500 sq. ft.                           |
| High intensity office                 | 1 space per 400 sq. ft.                           |
| Restaurants                           | 1 space per 250 sq. ft. of dining area            |
| Civic structures                      | 1 space per 500 sq. ft.                           |
| Hotels, motels and bed and breakfasts | 1 space per room plus 2 spaces for administration |
| Conference rooms or centers           | 1 space per 200 sq. ft.                           |
| Wholesaling or manufacturing          | 1 space per 1,000 sq. ft.                         |
| Storage space                         | 1 space per 1,000 sq. ft.                         |
| Gasoline or filling stations          | 1 space per 300 sq. ft.                           |
| Other uses *                          | 1 space per 500 sq. ft.                           |

\* Uses not defined may be appealed per Section 16-62 to the Planning and Zoning Commission to reduce the required parking.

- (3) Low-Density Residential (R-1), General Density Residential (R-2) and High-Density Residential (R-3). Off street parking requirements for these residential zone districts shall be one (1) space for homes of less than eight hundred fifty (850) square feet; two (2) spaces for single-family homes; four (4) spaces for duplex development (two [2] per unit); and one and one-half (1.5) spaces per unit for multi-family developments of three (3) or more units. Access shall be from the alley if one is present. Garage spaces and driveways count towards this requirement. Parking for special uses in these zone districts shall be determined during the review process pursuant to Section 16-61 of this Chapter. Single-family and duplex homes in the Old-Town Overlay and properties that do not have alley access are exempt from this requirement.

(Ord. 13 §2, 2012)

#### **Sec. 16-233. Location on other property.**

If the required automobile parking spaces cannot reasonably be provided on the same lot on which the principal use is conducted, such spaces may be provided on other off-street property, provided that such property lies within four hundred (400) feet of the main entrance to such principal use. Such automobile parking space shall be associated with the principal use and shall not thereafter be reduced or encroached upon in any manner.

(Prior code 17.07.013)

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**Sec. 16-234. Extension of parking areas or spaces for commercial uses into residential districts.**

Required parking areas or spaces associated with a commercial use in a commercial zone district may extend up to one hundred and twenty (120) feet into a residential zone district, provided that the parking area or space:

- (1) Adjoins the commercial district;
- (2) Has its only access to, or fronts upon, the same street that serves the commercial use and is adjacent to the property for which it provides the required parking space; and
- (3) Is separated from abutting properties in the residential district by adequate screening such as a fence or a buffer strip of vegetation at least six (6) feet in height.

(Prior code 17.07.014; Ord. 11-2001 §12)

**Sec. 16-235. Parking for multifamily dwellings.**

No more than six (6) of the required number of parking spaces shall be allowed between a multifamily dwelling unit and a street or highway unless otherwise approved.

(Prior code 17.07.015)

**Sec. 16-236. No reduction in required off-street parking — variances.**

No parking area or off-street parking space shall be encroached upon by buildings, storage or other use; nor shall the number of required parking spaces be reduced except upon written application for a variance under Section 16-62 of this Chapter and a finding that by reason of a permanent reduction in floor area, building occupancy, seating capacity, number of employees or other such cause, the number of required parking spaces can be reduced without violating the purpose and intent of the off-street parking regulations.

(Prior code 17.07.016; Ord. 11-2001 §12)

**Sec. 16-237. Mixed uses.**

In the case of mixed uses, the total requirement for off-street parking shall be the sum of the requirements of the various uses computed separately as specified herein.

(Prior code 17.07.017)

**Sec. 16-238. Off-street loading and unloading space required.**

Every lot on which a business, trade or industry use is hereafter established shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley, or if there is no alley, to a street. For the purpose of this Section, an off-street loading space shall have minimum dimensions of twelve (12) feet by thirty-five (35) feet. Required space shall be considered as follows:

- (1) Retail business. One (1) space for each ten thousand (10,000) square feet of gross floor area.



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- (2) Wholesale and industry. One (1) space for each fifteen thousand (15,000) square feet of gross floor area.
- (3) Truck terminals. Sufficient space to accommodate the maximum number of trucks to be stored or to be loading or unloading at the terminal at any one (1) time.

(Prior code 17.07.020)

#### **Sec. 16-239. One principal building on a lot; exceptions and procedures.**

- (a) Only one (1) principal building and its customary accessory buildings may be erected on any one (1) lot, except as allowed within a planned unit development (PUD); and except that in the General Business (B-1), Highway Business (B-2), Light Industrial (I-1) and Special Recreational (S-1) districts, more than one (1) principal building may be allowed on a single lot by special use permit when the buildings will be maintained under single ownership.
- (b) In addition to the application and approval criteria set forth in Section 16-61 of this Chapter, an applicant for a special use permit to allow for more than one (1) principal building on a lot shall be required to provide the following information with its application:
  - (1) A site plan drawn to scale (not to exceed 1"=50') in dark ink, or presented on legible printed sheets, utilizing sheets not more than 24"x36" and not less than 11"x17" in size unless a different size is allowed by the Town Administrator. Where multiple sheets are used, an index shall be provided and each sheet shall be separately identified and cross-referenced with the sheets attached to it. The site plan shall be prepared by an engineer, surveyor or other qualified professional where the scope or nature of the application, or the Town's review of same, require the detail and certainty of a professionally prepared plan.
  - (2) The site plan shall accurately depict, and be accompanied by a narrative report describing the following items:
    - a. The dimensions and location of all existing or proposed buildings and structures, above- and below-ground utilities and other improvements on the subject lot. All principal buildings must be served by their own separate water and sanitary sewer lines, and shall be separately metered.
    - b. Building envelopes for all existing and proposed buildings.
    - c. Off-street parking areas and spaces and loading areas.
    - d. Vehicle and pedestrian ingress and egress points and the traffic circulation pattern showing the direction of traffic flow.
    - e. The location of service and refuse collection areas.
    - f. The location of all signs indicating the size, shape and height of each sign.
    - g. The type, location, design and specifications (including photometrics) for all outdoor lighting.
    - h. The location of existing and proposed fences, landscaping and other methods of visual screening. Landscaping shall conform to the requirements of the Town landscape/planting guide and the method of maintenance of the landscaping, as well as a list of type, size and quantity of plant materials and the general location of the landscaping shall be provided.
    - i. The estimated date of completion of the proposed improvements.

(Prior code 17.07.030; Ord. 11-2001 §12; Ord. 11-2003 §1)

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**Sec. 16-240. Visibility at intersections.**

On a corner lot in any residential district, no planting, structure, sign, fence, wall or obstruction to vision more than three (3) feet in height measured from the centerline of the street shall be placed or maintained within the triangular area formed by the intersecting street right-of-way lines and a straight line connecting points on the street right-of-way lines, each of which is twenty-five (25) feet from the point of intersection.

(Prior code 17.07.040)

**Sec. 16-241. Gasoline service or filling stations.**

The following regulations shall apply to all gasoline service or filling stations:

- (1) All buildings shall be located at least forty (40) feet from any street right-of-way line.
- (2) Gasoline pumps and other appliances shall be located at least fifteen (15) feet from any street right-of-way line.
- (3) All service, storage or similar activities shall be conducted entirely on the premises.
- (4) All major repair work, if any, shall be conducted within a completely enclosed building.
- (5) Open storage of wrecked or inoperable cars, discarded tires, auto parts or similar materials shall not be permitted.

(Prior code 17.07.050)

**Sec. 16-242. Signs and outdoor advertising.**

- (a) Purpose and intent. The regulations in this Section are intended to coordinate the use, placement, physical dimensions and design of all signs within the Town. The purpose of these regulations is to:
  - (1) Ensure that signs are well designed and contribute in a positive way to the Town's visual environment, express local character, honor local heritage and enhance the distinctive image for the Town.
  - (2) Recognize that signs are a necessary means of visual communication for the convenience of the public and provide flexibility within the sign review/approval process to allow for unique circumstances and creativity.
  - (3) Recognize and ensure the right of those concerned to identify businesses, services and other activities by the effective use of signs and limit signs to those which are accessory and incidental to the use on the premises where such signs are located.
  - (4) Provide a reasonable balance between the right of an individual to identify his or her business and the right of the public to be protected against the visual discord resulting from the unrestricted proliferation of signs and similar devices.
  - (5) Protect the public from damage or injury caused by signs that are poorly designed or maintained and from distractions or hazards to pedestrians or motorists caused by the indiscriminate placement or use of signs.
  - (6) Encourage signs that are responsive to the aesthetics and character of their particular location, adjacent buildings and uses and the surrounding neighborhood; and ensure that signs are compatible and integrated with the building's architectural design and with other signs on the property.

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- (7) Ensure that signs are appropriate for the type of street on which they are located.
- (8) Bring nonconforming signs into compliance with these regulations.
- (b) Administration. The Town Administrator shall administer the sign regulations herein.
  - (1) Nonconforming signs. A legally permitted permanent nonconforming sign may remain, provided that it is maintained in good repair, with the following provisions.
    - a. Modification. Nonconforming signs shall not be enlarged, extended, structurally reconstructed or altered in any manner unless the sign is modified to conform to these regulations.
    - b. Damage. A nonconforming sign or the structure supporting the sign which is damaged or destroyed to the extent of fifty percent (50%) or more shall not be altered, replaced or reinstalled unless it is in conformance with these regulations. If the damage or destruction is less than fifty percent (50%), the sign must be under repair within sixty (60) days and all repairs must be completed within six (6) months.
    - c. Discontinuance. The property signage must be brought into conformance with these regulations within six (6) months following a change in use.
    - d. Change in location. Nonconforming signs may not be moved to a new location.
- (c) Permit procedures. No sign, except as provided by Subsection (f) of this Section, shall be erected, displayed, altered, relocated or replaced until the Town has issued a sign permit and the sign registration sticker is duly affixed to the sign.
  - (1) Permit application. Applications for sign permits shall be submitted on the forms provided by the Town, completed as required, with the required sign permit fee attached. At a minimum, the sign permit application shall include the following:
    - a. Business name, address and phone number.
    - b. Business owner name, mailing address and phone number.
    - c. Name, mailing address and phone number of property owner.
    - d. Site plan showing the location of the sign on the premises in relation to lot lines, buildings, sidewalks, streets, public rights-of-way and street intersections within three hundred (300) feet of the proposed sign.
    - e. Description of sign (or signs), including type, size, structural design and construction materials.
    - f. Drawing or photograph of the proposed sign with specifications indicating height, perimeter, area of sign and/or area of copy, dimensions, type of lettering proposed, means of support, method of illumination and any other significant characteristics.
    - g. Any other information requested by the Town Administrator in order to carry out the purpose of these regulations.
    - h. The required sign permit fee as established by resolution of the Town.
  - (2) Permit review and action. The Town Administrator shall review the sign permit application and issue or deny the permit in conformance with the standards in this Code.
    - a. Official date. The official date of submission shall be the day the Town Administrator has determined that the application, with all required data, has been properly prepared and submitted and is complete.
    - b. Time to review. The Town Administrator shall determine whether the proposed sign will or will not be in compliance with the requirements of these regulations and shall, within seven

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- (7) to ten (10) days of the official date of submission, ask for additional information or issue or deny the sign permit.
- c. Photograph. When the sign has been completed, the applicant shall photograph the completed sign and submit the photograph to the Town Administrator. The Town Administrator shall then inspect the sign.
  - d. Inspection for compliance. The Town Administrator shall perform a final inspection after installation of any approved sign and, if approved, attach the approval sticker to the sign.
  - e. Discrepancies. Any discrepancies between any sign as approved and the sign as constructed shall be identified in writing by the Town Administrator and may result in the halt of construction and correction of the discrepancy. If the discrepancy is not corrected within twenty (20) days after written notice, the sign may be ordered removed by the Town Administrator.
  - f. Registration of all signs. All signs must be registered with the Town. Signs that are certified as legal nonconforming signs may continue to be displayed, provided that a registration sticker is affixed to the sign.
  - g. Information to be affixed on permitted signs. All permitted signs after the effective date of these regulations (and legal nonconforming signs) shall have the following information permanently affixed in a conspicuous place.
    - 1. Date of sign permit approval.
    - 2. The sign permit number.
    - 3. The voltage of any electrical apparatus used in connection with the sign.
  - h. Violations. Any sign which has not been permitted or has not been certified as a legal nonconforming sign shall be deemed to be in violation of these regulations and shall be ordered removed by the Town Administrator, with the costs of removal to be at the expense of the sign owner or the property owner. Failure to comply will result in the Town proceeding with the enforcement procedures presented in Section 16-3 of this Chapter.
- (3) Expiration of sign permit. If the sign authorized by any sign permit has not been erected within sixty (60) days from the date of approval, the sign permit shall be deemed expired. Prior to the deadline of sign installation, the applicant may request an extension, in writing, from the Town Administrator.
- (4) Revocation of sign permit. Signs must be properly maintained, painted and kept free from all hazards. The Town Administrator shall take action if any sign, whether new or preexisting, is damaged, moved or otherwise altered, either intentionally or by natural forces, in a manner which causes the sign to be not in conformity with these regulations or to be a hazard or danger to the public. The Town Administrator shall give written notice specifying the violation to the sign owner and the property owner to conform or to remove the sign. If the sign has not been brought into conformance within thirty (30) days from the date of the notice, the Town Administrator shall revoke the sign permit and the subject sign shall be removed at the expense of the property or business owner.
- (d) Appeals.
- (1) Appeals to the Board of Adjustment may be taken by any person subject to and aggrieved by a decision of the Planning and Zoning Commission or the zoning enforcement official made under this Section. Such appeal shall be taken within ten (10) days from the date of the decision sought to be appealed by filing with the Town Administrator a written notice specifying the grounds thereof. All appeals shall be accompanied by the appropriate fee. The Town Administrator shall promptly transmit to the Board of Adjustment all papers constituting the record upon which the action or decision being appealed was taken. A timely appeal shall stay

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all proceedings in furtherance of the action appealed from unless the Town Administrator certifies to the Board of Adjustment that, by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of competent jurisdiction for good cause shown on notice to the Town Administrator. The Board of Adjustment shall fix a reasonable time and place for a hearing on an appeal not more than forty-five (45) days after the date of receipt of the notice of appeal and send notice thereof in writing by regular mail to the appellant not less than fifteen (15) days in advance. The appellant shall appear in person or by an agent or attorney at the hearing and be heard. Absent good and just cause, the failure of an appellant or his or her agent or attorney to attend the hearing on appeal shall constitute an abandonment of the appeal, and no further proceedings shall be had thereon. Appeals shall be heard and determined in a reasonably prompt fashion. Final decisions of the Board of Adjustment shall be reduced to writing and signed by the chairperson and shall be provided to the applicant.

- (2) Interpretation. Questions concerning whether a certain type of sign is permitted shall be addressed to the Planning staff.
- (e) Comprehensive Sign Plan. Applicants wishing to vary from the sign number and size limits set forth in this Section may submit a Comprehensive Sign Plan application as outlined below.
  - (1) General. A Comprehensive Sign Plan may or may not run with the property and shall be approved subject to such safeguards, terms and conditions as deemed necessary and appropriate to protect and preserve the intent and purposes of this Section. Violations of the terms and conditions imposed on a Comprehensive Sign Plan shall be deemed violations of this Section and shall be punishable under the general penalty provisions of this Code.
  - (2) Applications for a Comprehensive Sign Plan (with appropriate copies and supporting materials) shall be submitted to the Town Administrator on forms provided therefor. All applications for a Comprehensive Sign Plan shall be initially reviewed by Town staff for completeness. A reasonable fee shall be charged for each application, and a site plan and/or other drawing and information may be required as part of the application. Actual costs for professional planning, engineering, legal and/or other consulting services incurred by the Town in reviewing an application shall be paid by the applicant.
  - (3) Administrative review process. Applications for a Comprehensive Sign Plan with total signage not in excess of twenty-four (24) square feet and with no internally lit signage shall be reviewed by the Town Administrator. At the time of filing a Comprehensive Sign Plan for administrative review, the applicant shall provide notice of the application to adjacent property owners (excluding public rights-of-way) summarizing the plan and notifying them of their right to comment on or object to the plan by filing such comments or objections with the Town Administrator within seven (7) business days of the date the application is filed with the Town. Such notice shall be provided by: (a) prominently and visibly posting the property subject to the application; and (b) delivering notice either by regular mail or personal delivery. Applications shall be reviewed within ten (10) business days, and the Town Administrator shall, in writing, approve, deny or conditionally approve the application based on the criteria set forth in Paragraph (5) below.
  - (4) Planning and Zoning Commission public hearing. Applications that do not meet the requirements for the administrative review process set forth in Paragraph (3) above shall be reviewed by the Planning and Zoning Commission at a public hearing. The applicant shall be notified in advance of the time and place of the Planning and Zoning Commission's public hearing and may attend and participate therein. Not less than fourteen (14) days prior to the hearing, written notice describing the request and the time and place for the hearing shall be prominently and visibly posted on the property subject to the application and sent by regular mail to the applicant and the owners of all properties that are adjacent to the subject property (excluding public rights-of-way). The Planning and Zoning Commission shall, in writing,

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approve, deny or conditionally approve the application based on the criteria set forth in Paragraph (5) below.

- (5) Approval. Comprehensive Sign Plans shall be approved by the Planning and Zoning Commission or Town Administrator, as applicable, but only after finding that the proposed plan will not adversely impact the neighborhood or the public safety and welfare. In making such a determination, the following criteria shall be considered:
  - a. Whether the features of the signs, including the illumination, support structure, color, lettering, height and location, are designed so that the signs are an attractive, effective and complimentary feature of the building or property which they serve;
  - b. Whether the signs make a positive contribution to the general appearance of the street and commercial area in which they are located;
  - c. Whether the scale and placement of the signs are appropriate for the building on which they are placed, the area in which they are located and are sensitive to the context in which they are used, and whether building signs are harmonious in scale and proportion with the building facade to which they are mounted; and
  - d. Whether the signs are professionally designed and fabricated of quality, durable materials.
- (f) Exempt signs. A sign permit shall not be required for the following types of signs, provided that the special conditions attached to each type of exempt sign are met.
  - (1) Name and address identification signs. One (1) sign indicating the address, number and/or name of occupants of the premises that does not exceed two (2) square feet in area per side and does not include any commercial advertising or other identification.
  - (2) Window signage. Signs and decals affixed or painted on windows or door glass panels, provided that not more than fifty percent (50%) of the total window area is covered.
  - (3) Flags. The flag of any nation, organization of nations, state, county or municipality, provided that no more than two (2) flags of a legal size defined in Subsection (k) of this Section may be displayed per business and that the flag is not used or displayed in connection with a commercial promotion or as an advertising device.
  - (4) Directional and warning signs. Any sign commonly associated with and limited to information and directions necessary and convenient for persons coming on the property, including signs marking entrances, private drive signs, handicapped parking signs, parking area, one-way drives, rest rooms, security and warning signs, pickup and delivery areas. The maximum size of each directional or warning sign shall be two (2) square feet.
  - (5) Public signs. Signs erected by government agencies or utilities, including traffic, utility, safety, railroad crossing and identification signs for public facilities.
  - (6) Temporary real estate signs (for sale, lease or rent). Display of these signs shall be limited to two (2) per property and six (6) square feet in area in residential zones and sixteen (16) square feet in all other zones. These signs shall be removed within thirty (30) days following closing of the sale or lease of the property.
  - (7) Garage or yard sale signs. Signs, where permitted, advertising garage sales or yard sales shall be installed no more than two (2) days prior to the sale and shall be removed within one (1) day after the close of the garage or yard sale.
  - (8) Historical plaques. Plaques authorized by Buena Vista Heritage or the State Historical Society identifying historic buildings or sites.
  - (9) Signs located inside buildings. Signs located inside a building, except that any sign which is located within five (5) feet of any window shall not have any flashing or moving lights, excepting

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temporary Christmas-type lights, which would produce any glare or distraction for any passing motorist.

- (10) Menu display board. One (1) menu sign may be located at the entrance of a restaurant, provided that it is no larger than three (3) square feet and is located in a permanent frame.
- (11) Political signs. Political signs no more than four (4) square feet announcing political candidates seeking office appearing on a ballot shall conform to the following stipulations:
  - a. No person shall post any political sign upon public or private property without permission of the property owner.
  - b. Political signs shall not be permitted on any utility pole, lighting pole or other similar structure.
  - c. Political signs shall be removed within five (5) calendar days following the election for which they were posted.
- (12) Temporary special event signage is signage used in conjunction with an approved Town special event permit. These temporary events signs shall be installed no earlier than fourteen (14) days prior to the event and must be removed twenty-four (24) hours after the approved special event.
- (g) Temporary signs. Temporary signs may be erected only after obtaining a temporary sign permit, which shall cite the length of time the sign may be displayed and date of expiration, excluding holiday decorations.
  - (1) Temporary sign permit application. A temporary sign permit application must be accompanied with the appropriate permit fee and a deposit fee as established by resolution of the Board of Trustees.
  - (2) Removal of temporary signs. Temporary signs must be removed within the time period specified on the permit. Upon applicant certification that the sign has been removed, the deposit shall be returned.
  - (3) Type and size of temporary signs. The following signs are those that require a temporary sign permit.
    - a. Sale banners. Banners used to advertise a sale or special event. Maximum duration of such banners is two (2) weeks. Banners shall be no larger than sixteen (16) square feet in area and shall be professionally created. Only one (1) banner shall be permitted at a time. The maximum number of banner temporary sign permits issued per business per year shall be three (3).
    - b. Construction signs. Construction signs announcing new buildings or projects may be permitted as temporary signs after the commencement of construction. Each construction project site shall be limited to one (1) sign on the construction site premises, not exceeding twenty (20) square feet in area and eight (8) feet in height. The construction sign shall be removed after the first certificate of occupancy for the project is issued.
    - c. Temporary vendor signs. Signs associated with vendors for special occasions shall be processed concurrently with the application for temporary use permit in conformance with Section 16-63 of this Chapter. Such signs shall be attached to the vendor cart or temporary structure and be made of permanent durable material.
    - d. Town event banners. Large event banners hung over Main Street advertising a Town event shall be permitted as a temporary sign for the time frame of one (1) week prior to the event and during the event only.
    - e. Inflatable signs and other objects. Signs and other objects which are inflated, including but not limited to balloons, for the purpose of attracting attention to a business may be

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permitted for a two-week duration once per quarter and no more than four (4) times in one (1) calendar year, excluding holiday decorations to be included during the season.

- (h) Signs requiring a special review sign permit. The following types of signs require a special review sign permit application with review and approval by the Planning and Zoning Commission. The special review sign permit process is encouraged for those signs of uniquely creative design or materials or in locations requiring review of special conditions. The special review sign permit process shall follow the same process as outlined in Subsection (e) of this Section.
- (1) Off-premises signs. The following shall apply to off-premises signs until such time that the Town adopts the Town Sign Plaza Program.
  - a. Off-premises signs shall be permitted in accordance with the terms and conditions of this Section. Off-premises signs are limited to nonresidential zones.
  - b. In order to obtain permission to use an off-premises sign, a business applicant shall meet the following requirements:
    - 1. The applicant shall obtain written permission from all adjacent property owners for the placement of the off-premises sign along street frontage on property either owned by the Town or by the adjoining property owners;
    - 2. The applicant shall submit an off-premises sign application and an off-premises sign application processing fee as established by the Board of Trustees;
    - 3. The applicant shall provide proof of insurance for liability arising out of the use or placement of said off-premises sign and shall verify that the Town is listed as an additional insured under said policy; and
    - 4. The off-premises sign applied for shall comply in all respects with the terms and conditions of this Section.
  - c. Off-premises signs shall comply with the following regulations:
    - 1. Off-premises signs shall not interfere with either pedestrian traffic or vehicle traffic;
    - 2. Off-premises signs shall not detract from the general appearance of the area in which the sign is being placed;
    - 3. Placement of off-premises signs shall be made in the discretion of the Town Administrator so as to avoid the over-proliferation of signs on one (1) parcel of property or in one (1) particular area;
    - 4. Off-premises signs shall not be placed in zone districts other than B-1 and B-2 Zone Districts;
    - 5. Off-premises signs shall not be placed in areas designated as Town parks;
    - 6. No business organization shall have more than one (1) off-premises sign located on Town property;
    - 7. There shall be no more than one (1) off-premises sign placed on any single parcel of property or property frontage; and
    - 8. Off-premises signs shall be no larger than six (6) square feet per side.
- (2) Exterior wall or roof murals.
- (3) Roof signs.
- (4) A sign painted on a wall.
- (5) Neon signs.



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- (6) A statuary sign.
- (7) Animated and moving signs. A sign or other display with either kinetic or illusionary motion powered by natural, manual, mechanical, electrical or other means, including but not limited to flags having commercial messages, garrison flags and all pennants, banners, streamers, propellers and discs, as well as flashing signs, signs with illuminated elements that are used to simulate the impression of motion, searchlights and signs with emissions such as smoke, vapors, sound or odor.
- (8) Backlit and internally illuminated signs, except such signs are prohibited on East Main Street pursuant to Subsection (i), below.
- (i) Prohibited signs. The following signs are expressly prohibited:
  - (1) Glaring signs. Signs with light sources or which reflect brightness (such as mirrors) in a manner which constitutes a hazard or nuisance. This includes signs with fluorescent text, graphics or background, as well as holographic signs.
  - (2) Obstructive signs. A sign or other advertising device erected or maintained in any manner so as to obstruct free and clear vision of an intersection, traffic approaching the intersection or a roadway.
  - (3) Posters and handbills. Any exterior sign affixed to any structure, tree, pole or natural vegetation.
  - (4) Strings of light. Any devices including lights that outline property lines, sales areas or any portion of a structure and are intended to advertise or draw attention to a business or commercial activity, except as follows:
    - a. Lights used temporarily as holiday decorations. Holiday lights are permitted between November 15 and January 15 of the holiday season.
    - b. Lights or other devices used on a temporary basis on parcels on which carnivals, fairs or other similar temporary activities are held.
    - c. Strings of lighting used to delineate an area of outdoor dining must be reviewed as part of the required landscaping plan.
    - d. All other strings of lighting must be reviewed as part of the required landscaping plan (Section 16-255 of this Chapter).
  - (5) Vehicle signs. Any sign displayed on a parked vehicle or trailer (also called "street blimps") where the primary purpose is to divert traffic to advertise a business not on or near the same premises. However, business names or logos are permitted on vehicles, provided that the vehicle is associated with the business and normally parked at the business premises.
  - (6) Signs in the public right-of-way. A sign in, on, over or above a public right-of-way that in any way interferes with normal or emergency use of that right-of-way.
  - (7) Abandoned signs.
  - (8) Backlit and internally illuminated signs on East Main Street.
- (j) Permitted signs. The following are permitted signs, provided that each sign conforms to the design criteria established for the relevant use or district in which the sign is located.
  - (1) Permitted maximum number, area and height. In the B-1 zone districts, no use by right on a property shall have more than two (2) signs with a maximum sign area of forty (40) square feet. In the B-2 and I-1 zone districts, no use by right on a property shall have more than two (2) signs with a maximum sign area of seventy-two (72) square feet. Variations from these limits may be permitted with the approval of a Comprehensive Sign Plan by the Planning and Zoning Commission.

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| <i><b>Zone District</b></i> | <i><b>Sign Type</b></i>   | <i><b>Number</b></i>                 | <i><b>Area</b></i>                              | <i><b>Height</b></i>   |
|-----------------------------|---|--------------------------------------|---|--|
| B-1                         | Wall  | 1 per street frontage                | 24 sq. ft.                                      | Cannot project above roofline  |
|                             | Projecting  | 1                                    | 6 sq. ft.                                       | Min. 8 ft. above ground<br>Max. 11 ft. above ground  |
|                             | Awning, canopy or marquee                                       | Counted toward total wall sign max.  | Counted toward total wall sign area             | Min. 8 feet above ground   |
|                             | Freestanding monument   | 1 (except prohibited on Main Street) | 6 sq. ft.                                       | Max. 4 ft. above ground  |
|                             | Portable A-frame, sandwich board, portable menu boards, wheeled | 1                                    | 12 sq. ft.;<br>Portable menu boards, 20 sq. ft. | N/A  |
| B-2, I-1                    | Wall  | 1 per street frontage                | 24 sq. ft.                                      | Min. 10 ft. above ground<br>Max. 20 ft. above ground<br>Max. 5 ft. to top of sign (monument) |
|                             | Projecting  | 1 (internally lit vinyl prohibited)  | 24 sq. ft.                                      | Min. 8 ft. above ground  |
|                             | Freestanding monument   | 2                                    | 48 sq. ft.                                      | Min. 10 ft. above ground<br>Max. 20 ft. above ground   |
|                             | Service station:  |                                      |   |  |
|                             | price sign  | 1 price sign per street front        | 9 sq. ft.                                       | Max. 10 ft.  |
|                             | self/full serve   | 1 per each pump island               | 3 sq. ft.                                       | N/A  |
|                             | Awning, canopy or marquee                                       | Counted toward total wall sign max.  | Counted toward total wall sign area             | Min. 8 ft. above ground  |
|                             | Portable A-frame, sandwich board, portable menu boards, wheeled | 1                                    | 12 sq. ft.;<br>Portable menu boards, 20 sq. ft. | N/A  |
|                             | Drive-through menu boards (B-2 only)                            | 1                                    | 20 sq. ft.                                      | 7 ft.  |
| R-1, R-2, R-3               | Home occupation   | 1                                    | 2 sq. ft.                                       | N/A  |
|                             | Freestanding  | 1 per subdivision entrance           | 24 sq. ft.                                      | Min. 10 ft. above ground<br>Max. 20 ft. above ground   |

- (2) General sign design standards. The following standards apply to all permitted signs in the Town. Standards associated with the word "shall" are mandatory; those that are "encouraged" are not mandatory but highly recommended.

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- a. Sign materials and construction. All signs shall be constructed of durable materials designed to withstand expected winds and erected so as not to sustain damage and deterioration from the elements. Permitted materials include wood, metal, stone or other durable material. No sign shall contain iridescent or Day-Glo paint. Permitted permanent exterior signs shall not be made of paper, cloth, canvas, cardboard, wallboard or other similar nondurable material.
  - b. Streamers. No sign or part of a sign shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners or other similar moving, fluttering or revolving devices.
  - c. Sign illumination. No sign or lighting device shall be placed or directed to permit the beams and illumination to be directed, reflected or beamed upon a public road, highway, sidewalk or adjacent property so as to cause traffic hazard, nuisance or glare. All lighting fixtures shall be designed to be "down lights;" i.e., direct lighting below a ninety-degree horizontal plane extending from the lowest point of the light source. Unless otherwise permitted, all signs shall be externally lit by lights in a visible fixture above the sign. Backlit and internally illuminated signs are allowed by special use. Full-spectrum and energy-efficient light bulbs are recommended.
  - d. Content. There shall be no signs or pictures of an obscene, indecent or immoral character such as will offend morals or decency in accordance with constitutional standards.
  - e. Maintenance. Every sign, including those specifically exempt from permits and permit fees, shall be maintained in good repair and in a safe, clean and attractive condition.
- (3) Measurement of sign area and height.
- a. Sign surface area. The area of a geometric shape enclosing any message, logo, symbol, name, photograph or display face shall be measured using standard mathematical formulas. Time-and-temperature devices shall not be included within the measurement of maximum sign area.
  - b. Sign height. The height of a sign shall be measured from the highest point of a sign to the ground surface beneath it. When berms are used in conjunction with signage, the height of the sign shall be measured from the mean elevation of the fronting street.
- (4) Sign types.
- a. Wall sign. One (1) wall sign is permitted per business in the B-1, B-2 and I-1 zones only, unless a business fronts directly onto two (2) public streets (i.e., the building or business property is contiguous to the street right-of-way); then one (1) wall sign per street frontage is permitted. In the event more than one (1) sign is proposed per frontage, a sign plan application must be submitted to be reviewed and approved by the Planning and Zoning Commission.
  - b. Wall sign design standards. Wall signs are encouraged to be uncluttered, used for the purpose of business identification, with good contrast between the letters and the background. A wall sign shall not extend above the roof or parapet of the building front or fascia. Wall signs should not interfere with the architectural features of historic structures. The maximum permitted wall sign area shall include the sign copy of a wall sign and an awning sign. The total permitted wall sign area shall be twenty four (24) square feet. Any awning signs shall be included in the maximum total sign area calculation for the business.
- (5) Projecting sign. In the B-1 zone, one (1) projecting sign is permitted per business, provided that the sign can be located in a manner that does not interfere with the building historic architecture.
- a. Projecting sign design standards. Projecting signs (permitted in the B-1 zone only) shall not exceed six (6) square feet of total sign area per side. Projecting signs shall extend from the building wall or fascia at an angle of ninety (90) degrees (unless the sign is a historic

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theatre marquee) and shall project no more than three (3) feet from the plane of the face of the building to which they are attached. Projecting signs located above awnings are discouraged. The lowest edge of a projecting sign area shall be no lower than eight (8) feet from the sidewalk or ground over which it extends. The top edge of a projecting sign area shall be no higher than fourteen (14) feet above the ground or sidewalk over which it projects.

- b. Revocable license. The owner of any permitted sign extending over a public street or other public right-of-way or space during the period of time that the sign and associated attachments are installed shall enter into a revocable license agreement with the Town prior to installing the sign.
- (6) Freestanding sign. In the B-2 and I-1 zones, one (1) freestanding sign is permitted per business, provided that it is located on the premises and the business is not otherwise identified on a freestanding directory sign. One (1) freestanding directory sign is permitted per shopping center or multi-tenant building in the B-2 or I-1 zone. In residential zones, not more than one (1) permanent subdivision identification sign is permitted for each primary entrance to a recorded subdivision, indicating only the name and logo of the subdivision.
- a. Freestanding sign design standards. Any freestanding sign shall be located inside the property line and shall be situated outside all clear sight triangles. Freestanding signs shall be designed to not block the view of an adjacent business and shall not interfere with any sidewalk or path. The maximum sign area permitted (per side) of a freestanding sign shall be forty-eight (48) square feet. Freestanding pole signs shall be no taller than twenty (20) feet at the top of the sign area and no less than ten (10) feet at the bottom of the sign area.
  - b. Freestanding monument signs are encouraged to be designed with attractive supports and surrounding landscaping. A freestanding monument sign shall be no more than five (5) feet tall at the top of the sign structure. Maximum contrast between letters and background is encouraged with minimal sign clutter.
  - c. A service station or other business selling automotive fuel is permitted one (1) price sign for each street frontage not to exceed nine (9) square feet in area and ten (10) feet in height. "Self/full serve" signs not to exceed three (3) square feet in area each are permitted on each end of each pump island. Signs affixed to the top or sides of an operable fuel dispensing pump shall not exceed three (3) square feet in area, shall only display instructional or price information and shall not include advertising copy pertaining to any product, sale or promotion.
- (7) Awning, canopy or marquee sign. One (1) awning, canopy or marquee sign is permitted per business in the B-1, B-2 and I-1 zones. Any portion of an awning, canopy or marquee containing advertising copy shall be treated as a sign and shall be included in the overall sign area maximum for wall signs.
- a. Awning sign design standards. The sign on an awning may be appliquéd or painted on the awning. Awning signs may not project above the awning itself, or be located on the slope of the awning. No awning shall be lower than eight (8) feet above the ground or sidewalk over which it extends. Awning signs shall be located on the "flat" surface, that is the awning surface parallel with the building wall facing the street frontage.
  - b. Canopy or marquee sign design standards. Canopy or marquee signs may not project above the structure itself or be located on the canopy roof. No canopy sign shall be lower than eight (8) feet above the ground or sidewalk over which it extends. Canopy or marquee signs shall be located on the "flat" surface, that is the surface parallel with the building wall and facing the street frontage. Canopy or marquee signs shall be located on the first floor business only.

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- c. Signs suspended below a canopy, marquee or awning. Signs suspended below a canopy, such as soffit signs, shall be no larger than two (2) square feet in size and shall be no lower than eight (8) feet from the sidewalk below.
    - d. Revocable license. The owner of any awning, canopy or marquee sign extending over a public street or other public right-of-way or space shall enter into a revocable license agreement with the Town prior to installing the sign.
  - (8) Drive-through menu boards. Drive-through menu boards are only allowed in the B-2 zone district. If the combination of proposed signs exceeds the maximum sign number and area standards, a Comprehensive Sign Plan for all signs on the site must be reviewed and approved pursuant to Subsection (e) of this Section. Menu boards and order boards shall be subject to the following standards:
    - a. Each drive-through restaurant shall be allowed one (1) menu board per drive-through service lane where customers preview the menu from their vehicles and one (1) menu board per drive-through service lane where customers order food from their vehicles.
    - b. Each menu board shall have a maximum allowable area of sixteen (16) square feet.
    - c. Each menu board shall have a maximum height of seven (7) feet.
    - d. Each menu board shall incorporate materials and colors that match or complement the materials and colors of the associated building.
    - e. Each menu board shall include an architecturally complementary base that is proportional to the size of the sign.
    - f. No other sign shall be attached or added to a menu board.
    - g. The sign must be screened with effective xeriscaping.
  - (9) Portable A-frame, sandwich board, menu boards, wheeled signs. One (1) portable sign is permitted per business and shall be located on the same property on which the business is located. No portable signs are permitted in the public right-of-way. Portable signs shall be no larger than three (3) feet by four (4) feet or twelve (12) square feet (exclusive of structural components), attractively designed, and be made of durable material. Menu boards shall be no greater than four (4) feet by five (5) feet or twenty (20) square feet in size.
  - (10) Home occupation sign. In a residential zone, one (1) wall sign is permitted as a business identification sign. One (1) sign per home occupation is permitted as a wall sign, not to exceed two (2) square feet. Home occupation signs shall contain only the name of the business and/or business owner.
  - (11) Historical signs. Legally permitted signs of thirty (30) years of age or more; i.e., "historical signs," are permitted in nonresidential zones, provided that the sign is kept in good repair and does not constitute a hazard to the public safety.
- (k) Definitions.

Abandoned sign means a sign which, for a period of ninety (90) consecutive days, has not advertised a business on the premises where such sign is located or for which a special or temporary sign permit has expired.

Advertising sign means a sign that describes products or services being offered to the public.

A-frame sign means a type of portable sign that is constructed or shaped in the form of the letter "A" (also called "sandwich board").

Animated sign means any sign which includes action or motion or whose copy is changeable by other than direct manual intervention.

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Area of copy means the entire area within a single continuous perimeter composed of squares, rectangles, circles, ovals or any other geometrical shape which enclose the extreme limits of the message, announcement or decoration on a wall, projecting or freestanding sign.

Area of sign means the area of the largest single face of the sign within a perimeter which forms the outside shape, including any frame, or forms an integral part of the display, but excluding the necessary supports or uprights on which the sign may be placed. If the sign consists of more than one (1) section or module (as in the case of wall and awning signs), all areas will be totaled.

Awning means a roof-like cover made of pliable material over a window or doorway that is attached to the outer wall or fascia of a building.

Banner means a temporary sign composed of lightweight material either enclosed or not enclosed in a rigid frame.

Canopy sign means a sign attached to a permanent covered walkway that extends over the public sidewalk.

Construction sign means a temporary sign erected on the premises on which construction is taking place, during the period of such construction, indicating the names of the architects, engineers, landscape architects, contractors and similar persons or firms having a role or interest with respect to the structure or project.

Cut-out-letter sign means the sign area considered to be that of a single rectangle or square encompassing all of the letters used to convey the message of the sign, including the open space between letters of words within that rectangle or square.

Directional sign means any sign commonly associated with and limited to information and directions necessary and convenient for persons coming on the property, including signs marking entrances, parking areas, one-way drives, rest rooms and pickup and delivery areas.

Directory sign means any sign containing a list of the names of business establishments located within a building complex.

Double-faced sign means a two-faced sign utilizing both sides or surfaces for display purposes.

Drive-through menu board means a sign displaying the menu of a drive-through restaurant to customers seated in vehicles in drive-through service lanes.

External illumination means illumination of a sign from a source of light not contained within the sign itself.

Flag means any fabric containing the official insignia of any nation, organization of nations, state, province, county, city or fraternal organization, with proportions that have been established by Presidential declaration; three (3) feet by five (5) feet when hung from a building; or five (5) feet by seven (7) feet when hung from a pole.

Freestanding sign means a sign permanently anchored directly to the ground or supported by one (1) or more posts, columns or other vertical structures or supports and not attached to or dependent for support from any building.

Frontage, business means the linear distance of the exterior building wall of a business facing a public right-of-way or highway and which contains the main entrance to the business.

Governmental sign means a sign erected and maintained pursuant to and in discharge of any governmental function or required by any law, ordinance or governmental regulation.

Grand opening sign means a temporary sign permitted to announce the opening of a completely new enterprise or the opening of an enterprise under new management.

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Height means the vertical distance between the ground level (prior to any filling, berming or landscaping solely for the purpose of elevating the sign) under a sign and the highest point of the sign structure.

Historical sign means a sign that is at least thirty (30) years in age.

Illegal sign means any sign for which a valid and current Town sign permit has not been obtained and which is not exempt from the provisions of this Section.

Internal illumination means illumination of a sign from a source of light contained within the sign itself, including sign letters created with neon tubing.

Marquee sign means any sign attached to or under a covered structure projecting from a building which extends over the sidewalk, usually also supported by posts. A marquee may also mean the projecting sign associated with theatres.

Monument sign means a freestanding sign with a base affixed to the ground, where the length of the base is at least two-thirds ( $\frac{2}{3}$ ) the horizontal length of the monument.

Mural means a painting or picture applied to and made part of a wall which may be pictorial or abstract and is characteristically visually set off or separated from the background color or architectural environment.

Neon sign means any sign that is illuminated by tubes filled with neon, argon, krypton and related inert gases, including any display of neon lighting tubes which is in view of the general public from a public right-of-way or from any public area, regardless of the shape, size, design or configuration.

Nonconforming sign means any sign for which a valid sign permit was obtained when constructed but is not in compliance with current sign regulations.

Off-premises sign means a sign that advertises a business, commodity, service or entertainment not related to the premises where the sign is located.

Permanent sign means an exterior sign constructed of durable, permanent material, such as wood, metal, stone or other durable material, not including paper, cloth, canvas, cardboard, wallboard or banner plastic (unless the sign is part of an awning).

Plaza sign means a one- or two-sided or three-dimensional structure displaying smaller signs, each of equal size, for the purpose of housing off-premises directional signs for one (1) or more businesses.

Pole sign means a freestanding sign with a base supported from the ground by a pole or a similar support structure of narrow width.

Political sign means a temporary sign announcing or supporting political candidates or issues connected with any national, state or local election.

Portable sign means a sign, graphic or display which can be readily moved from place to place and which is not affixed to a building, a vehicle or the ground.

Projecting sign means a sign which is supported by an exterior wall of a building or other structure and which is constructed and displayed perpendicular to the face of the building or other structure so that both sides of the sign are visible. A projecting sign extends out from the building.

Real estate sign means a temporary sign which is used to offer for sale, lease or rent the premises upon which the sign is placed.

Roof sign means a sign that is constructed to extend above the primary peak of the roofline.

Sign means any identification, description, illustration or device, illuminated or nonilluminated, which is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, service, place, activity, person, institution, business or

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solicitation, including any permanently installed or situated merchandise or any logo, painting, banner, pennant, placard or temporary sign designated to advertise, identify or convey information, with the exception of window displays and national flags.

Soffit sign means a sign affixed to the underside of a roof overhang adjacent to a store or other commercial premises.

Statuary sign means any three-dimensional sign which is a modeled or sculptured likeness of a living creature or inanimate object.

Subdivision entrance sign means a sign which, by means of a symbol, name, logo or other graphic, identifies a subdivision.

Temporary sign means a sign displayed for a fixed, terminable length of time and to be removed after the temporary purpose has been served or the term length has expired, whichever comes first.

Town Sign Plaza Program means a coordinated sign plan program for wayfinding throughout the Town.

Walkway sign means a sign affixed to the underside, side or top of a permanent covered walkway or canopy that covers the public right-of-way.

Wall sign means a sign painted on or attached to an exterior wall of a building or other structure and which is mounted parallel to the surface so that only one (1) side is visible to the public.

(Prior code 17.07.060; Ord. 11-2001 §12; Ord. 2-2005 §§1, 2; Ord. 14-2005 §1; Ord. 4 §1, 2009; Ord. 7 §§1—3, 2010; Ord. 11 §1, 2011; Ord. 11 §1, 2012)

#### **Sec. 16-243. Junkyards.**

Junkyards are prohibited everywhere within the Town. This prohibition shall apply to private as well as commercial lots and uses, and shall encompass the unenclosed storage of junked vehicles. For purposes of this Section, junked vehicle shall have the meaning as provided in Article III of Chapter 8 of this Code.

(Prior code 17.07.070; Ord. 11-2001 §12)

#### **Sec. 16-244. Animals.**

The keeping of livestock, including cattle, horses, mules, burros, sheep, swine, llama and goats and any animal used for working purposes on a farm or ranch, or is raised for food or fiber production; and fowl, including ducks, geese, chickens, turkeys, pheasants and other game birds, shall be prohibited in all zone districts except as allowed by permit issued under Article V of Chapter 7 of this Code.

(Prior code 17.07.080; Ord. 11-2001 §12)

#### **Sec. 16-245. Dimensional requirements.**

- (a) The dimensional requirements as set forth in the following table shall apply in the enumerated zone districts.



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|                              |               | Lot Size                    |                             |                       | Minimum Yard Requirements |                          |                          |                                     |                                |
|------------------------------|---------------|-----------------------------|-----------------------------|-----------------------|---------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------------|
|                              |               | Min. Lot Area (square feet) | Max. Lot Area (square feet) | Min. Lot Width (feet) | Front Yard Setback (feet) | Side Yard Setback (feet) | Rear Yard Setback (feet) | Allowable Maximum Building Coverage | Maximum Building Height (feet) |
| <b>Residential</b>           |               |                             |                             |                       |                           |                          |                          |                                     |                                |
| R-1                          | Single-family | 6,500 (b)                   | None                        | 65                    | 25                        | 5.0                      | 15 (d)                   | 35%                                 | 25                             |
|                              | Two-family    | 10,000 (b)                  | None                        | 75                    | 25                        | 7.5                      | 15                       | 40%                                 | 25                             |
| R-2                          | Single-family | 6,000 (b)                   | None                        | 65                    | 20                        | 5.0                      | 15 (d)                   | 35%                                 | 35                             |
|                              | Two-family    | 10,000 (b)                  | None                        | 65                    | 20                        | 5.0                      | 15                       | 40%                                 | 35                             |
| R-3                          | Single-family | 6,000 (b)                   | None                        | 65                    | 20                        | 5.0                      | 15 (d)                   | 35%                                 | 35                             |
|                              | Two-family    | 10,000 (b)                  | None                        | 65                    | 20                        | 5.0                      | 15                       | 40%                                 | 35                             |
|                              | Three-family  | 10,000 (b)                  | None                        | 75                    | 20                        | 5.0                      | 15                       | 50%                                 | 35                             |
|                              | Four-family   | 12,000 (a)(b)               | None                        | 75                    | 20                        | 5.0                      | 15                       | 50%                                 | 35                             |
|                              | Row-house     | 2,500                       | 5,000                       | 25                    | 20                        | 7.5 (per end unit only)  | 15                       | 50%                                 | 35                             |
| <b>Commercial-Industrial</b> |               |                             |                             |                       |                           |                          |                          |                                     |                                |
| B-1                          |               | 2,500                       | None                        | 25                    | None                      | 0 (c)                    | 0 (c)                    | 100%                                | 35                             |
| B-2                          |               | 2,500                       | None                        | 25                    | 25                        | 0 (c)                    | 0 (c)                    | 100%                                | 35                             |
| I-1                          |               | None                        | None                        | None                  | 25                        | 0 (c)                    | 0 (c)                    | 100%                                | 35(j)                          |
| <b>CROSSMAN'S ADDITION</b>   |               |                             |                             |                       |                           |                          |                          |                                     |                                |
| R-1 CA OT                    | Single-family | 4,375                       | None                        | 35                    | 15                        | 5.0                      | 15                       | 45%                                 | 30                             |
|                              | Two-family    | 6,250                       | None                        | 50                    | 15                        | 5.0                      | 15                       | 45%                                 | 30                             |
| R-2 CA OT                    | Single-family | 4,375                       | None                        | 35                    | 20                        | 5.0                      | 15                       | 45%                                 | 35                             |
|                              | Two-family    | 6,250                       | None                        | 50                    | 20                        | 5.0                      | 15                       | 45%                                 | 35                             |
| R-3 CA OT                    | Single-family | 4,375                       | None                        | 35                    | 15                        | 5.0                      | 15                       | 45%                                 | 35                             |
|                              | Two-family    | 6,250                       | None                        | 50                    | 15                        | 5.0                      | 15                       | 45%                                 | 35                             |
|                              | Three-family  | 6,250                       | None                        | 50                    | 15                        | 5.0                      | 15                       | 50%                                 | 35                             |
|                              | Four-family   | 6,250                       | None                        | 50                    | 15                        | 5.0                      | 15                       | 50%                                 | 35                             |
|                              | Row-house     | 2,500                       | None                        | 35                    | 15                        | 7.5 (per end unit only)  | 15                       | 50%                                 | 35                             |
| B-1 CA OT                    | Mixed use     | 2,500                       | None                        | 25                    | None                      | 0                        | 0                        | 100%                                | 35                             |

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|                    | OLD TOWN OVERLAY DISTRICT |                       |                                |                                |                          |                          |                                     |                           |                                |
|--------------------|---------------------------|-----------------------|--------------------------------|--------------------------------|--------------------------|--------------------------|-------------------------------------|---------------------------|--------------------------------|
|                    | Min. Lot Width (feet)     | Max. Lot Width (feet) | Min. Front Yard Setback (feet) | Max. Front Yard Setback (feet) | Side Yard Setback (feet) | Rear Yard Setback (feet) | Allowable Maximum Building Coverage | Minimum Frontage Buildout | Maximum Building Height (feet) |
| <b>Residential</b> |                           |                       |                                |                                |                          |                          |                                     |                           |                                |
| <b>R-1 OT</b>      | <b>25</b>                 | <b>100 (g)</b>        | <b>15</b>                      | <b>25</b>                      | <b>3</b>                 | <b>5 (h)</b>             | <b>60%</b>                          | <b>NA</b>                 | <b>30</b>                      |
| <b>R-2 OT</b>      | <b>25</b>                 | <b>100 (g)</b>        | <b>10</b>                      | <b>20</b>                      | <b>3</b>                 | <b>5 (h)</b>             | <b>70%</b>                          | <b>NA</b>                 | <b>35</b>                      |
| <b>R-3 OT</b>      | <b>25</b>                 | <b>100 (g)</b>        | <b>5</b>                       | <b>15</b>                      | <b>3</b>                 | <b>5 (h)</b>             | <b>80%</b>                          | <b>NA</b>                 | <b>35</b>                      |
| <b>B-1 OT</b>      | <b>25</b>                 | <b>150 (g)</b>        | <b>0</b>                       | <b>15 (e)</b>                  | <b>0</b>                 | <b>0</b>                 | <b>100%</b>                         | <b>60% (f)</b>            | <b>45</b>                      |

- (a) Plus one thousand two hundred fifty (1,250) square feet additional lot per dwelling unit in excess of 4. xin
- (b) Plus two thousand five hundred (2,500) square feet for a corner lot or a reverse corner lot. xin
- (c) No side or rear yard shall be required except as follows: Where the lot abuts upon property zoned for residential use, adequate screening such as a fence or buffer strip of vegetation at least eight (8) feet in height shall be provided along the side and/or rear lot line of side abutting residential property. xin
- (d) Except that a garage abutting a publicly dedicated alley with a width of no less than fifteen (15) feet may be set back five (5) feet from the property line. Accessory structures may be placed with a zero setback, provided the structure is located entirely on the property, is not located in any utility, drainage or other easement and the structure does not create any drainage concerns. Setbacks for garages shall follow the setbacks for the applicable zone district, except for in the rear of the lot. The rear setback for garages shall be as follows: qa Attached or detached garage or carport with no alley: Five (5) feet. qa With an alley and doors opening directly onto the alley: Five (5) feet. qa With an alley but with no doors opening directly onto the alley: Zero (0) feet. xin
- (e) East Main Street, from Hwy 24 to Belden, all buildings shall have no setback. xin
- (f) East Main Street, from Hwy 24 to Belden, the minimum frontage buildout shall be seventy percent (70%). xin
- (g) A single-family house shall not occupy more than 2 historic Town lots. A duplex shall not occupy more than three (3) historic lots. xin
- (h) If garage door does not open into the right-of-way, the minimum rear setback may be zero (0) feet. xin

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(i) Frontage buildout: The total lineal footage of the front wall of building and planted components over fifteen (15) feet tall with a continuous canopy facing the public right-of-way, divided by the lot width. xin

(j) For wireless telecommunication services facilities and equipment the height standards shall be seventy-five (75) feet. 16-252 (2)(a). xin

(Ord. 5 §1, 2011; Ord. 2 § 2(Exh. A), 2014)

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**Sec. 16-246. Mobile homes, trailer coaches and manufactured homes - placement.**

Mobile homes, trailer coaches and manufactured homes within the Town shall be placed on a permanent foundation, with axles and wheels removed or detached in such a manner that the mobile home, trailer coach or manufactured home becomes an improvement to real property as a permanent structure.

(Prior code 17.07.100, 17.07.101)

**Sec. 16-247. Skirting.**

Mobile homes, trailer coaches and manufactured homes within the Town shall be skirted in a neat and orderly fashion with an opaque material so that the area beneath the mobile home, trailer coach or manufactured home is not visible from any direction.

(Prior code 17.07.102)

**Sec. 16-248. Mobile home parks.**

Any mobile home or trailer coach located in a legally established mobile home park within the Town shall be exempt from the provisions of Section 16-246, provided that the owner of the mobile home or trailer coach shall rent but shall neither own nor have entered into a contract to purchase the land, lot or mobile home site on which the mobile home or trailer coach is located. In such case, the provisions of other sections of this Chapter shall still apply.

(Prior code 17.07.103)

**Sec. 16-249. Travel trailers.**

Travel trailers shall be used as residences only on a temporary basis. Such temporary residential use shall occur only in a legally permissible commercial establishment designed and designated for the temporary placement of travel trailers, or upon a private lot not to exceed two (2) weeks when the owner or user of the travel trailer is visiting the lot owner or renter.

(Prior code 17.07.104)

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**Sec. 16-250. Inspection requirement.**

Any mobile home or trailer coach not bearing a label or seal of compliance from a recognized testing laboratory, such as Underwriters' Laboratory or similar testing laboratory or service, or an inspection tag from the State Division of Housing, shall not be located in the Town; except that mobile homes and trailer coaches already located in the Town as of the effective date of the ordinance codified in this Chapter shall not be subject to the inspection requirement of this Section.

(Prior code 17.07.105)

**Sec. 16-251. Manufactured homes.**

Nothing in this Chapter shall be construed to exclude or prohibit, or have the effect of excluding or prohibiting, the use and siting of single-family manufactured housing units within the Town, so long as such housing units meet or exceed the National Manufactured Housing Construction Standards Act of 1974, as amended, and/or equivalent engineering performance standards established in the Town's municipal building code.

(Prior code 17.07.106; Ord. 11-2001 §12)

**Sec. 16-252. Telecommunications facilities.**

(a) Definitions:

Alternative tower structure. Shall mean man-made trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflage or conceal the presence of antennas and/or towers. This term also includes any antenna or antenna array attached to the alternative tower structure.

Antenna. Any structure, including but not limited to a monopole antenna, tower, parabolic and/or disk-shaped device in single or multiple combinations or either solid or mesh construction, intended for the purpose of receiving or transmitting communication to or from another antenna, device or orbiting satellite, as well as supporting equipment necessary to install or mount the antenna.

Antenna tower. Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas. This includes guyed mast, lattice towers, monopole antennas, alternative antenna tower structures and towers taller than ten (10) feet constructed on top of another building, along with any separate building on the lot used to house any supporting electronic equipment.

Co-Location. Locating one (1) or more antennas for more than one (1) provider on a single antenna tower or alternative antenna tower structure on a single lot.

Customer premises equipment. Means equipment employed on the premises of an individual telecommunications service end-user or customer to receive or transmit personal telecommunications.

Guyed Mast Towers. A guyed mast is a tall thin vertical structure that receives support from guy lines.

Height, antenna tower. The distance measured from the anchored base of a tower, at grade, to the highest point of the structure inclusive of any antennas placed on the top of the tower.

Lattice antenna tower. A self-supporting tower with multiple legs and cross bracing of structural steel.

Monopole antenna tower. A slender un-guyed self-supporting tower that does not include any lattice cross bracing structure on which wireless antennas can be placed.

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Wireless telecommunication services facilities and/or equipment. Cellular telephone, paging, enhanced specialized mobile radio (ESMR), personal communication services (PCS), commercial mobile radio service (CMRS) and other wireless commercial telecommunication devices and all associated structures and equipment including transmitters, antennas, monopoles, towers, masts and microwave dishes, cabinets and equipment rooms. This definition does not apply to noncommercial satellite dish Antenna, radio and television transmitters and Antenna incidental to residential use.

- (1) Cellular means an analog or digital wireless communication technology that is based on a system of interconnected neighboring cell sites, each of which contains antenna.
  - (2) Enhanced Specialized Mobile Radio (ESMR) means a digital wireless communication technology that specializes in providing dispatching services.
  - (3) Personal Communication Services (PCS) means a digital wireless communication technology that has the capacity for multiple communications services and will provide a system in which calls will be routed to individuals rather than places, regardless of location.
- (b) Intent and purpose. To provide design standards for cellular communication facilities in order to ensure their compatibility with surrounding development. The unique and diverse landscapes of the Town are among its most valuable assets. Protecting these assets will require that location and design of wireless communication services facilities and equipment be sensitive to and in scale and harmony with, the character of the community. The purpose of these regulations is to provide predictable and balanced standards for the siting and screening of wireless telecommunication services facilities and equipment on property within the jurisdiction of the Town in order to:
- (1) Preserve the character and aesthetics of areas which are in close proximity to wireless telecommunication services facilities and equipment by minimizing the visual, aesthetic and safety impacts of such facilities through careful design, siting and screening; placement, construction or modification of such facilities;
  - (2) Protect the health, safety and welfare of persons living or working in the area surrounding such wireless telecommunication services facilities and equipment from possible adverse environmental effects (within the confines of the Federal Telecommunications Act of 1996) related to the placement, construction or modification of such facilities;
  - (3) Provide development which is compatible in appearance with allowed uses of the underlying zone;
  - (4) Facilitate the Town's permitting process to encourage fair and meaningful competition and, to the greatest extent possible, extend to all people in all areas of the Town high quality wireless telecommunication services at reasonable costs to promote the public welfare; and
  - (5) Encourage the joint use and clustering of antenna sites and structures, when practical, to help reduce the number of such facilities which may be required in the future to service the needs of customers and thus avert unnecessary proliferation of facilities on private and public property.
- (c) Applicability. All applications for the installation or development of wireless telecommunication services facilities and/or equipment must receive building permits, prior to installation. Prior to the issuance of appropriate building permits, wireless telecommunication services facilities and/or equipment shall be reviewed for approval by the Planning Department in conformance with the provisions and criteria of this Section. Wireless telecommunication services facilities and equipment subject to the provisions and criteria of this Section include cellular telephone, paging, enhanced specialized mobile radio (ESMR), personal communication services (PCS), commercial mobile radio service (CMRS) and other wireless commercial telecommunication devices and all associated structures and equipment including transmitters, antennas, monopole antennas, towers, masts and microwave dishes, cabinets and equipment rooms. These provisions and criteria do not apply to noncommercial satellite dish Antenna, radio and television transmitters and Antenna incidental to residential use. All references made throughout this Section, to any of the devices to which this

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Section is applicable, shall be construed to include all other devices to which this Section 16-252 is applicable.

(d) Procedure.

- (1) General. The applicant shall conduct a pre-application meeting with staff of the Planning Department. The Planner shall then prepare a pre-application summary describing the submission requirements and any other pertinent land use material, the fees associated with the reviews and the review process in general.
- (2) Planning review. After the pre-application meeting, the applicant shall submit to the Planning Department an application for review and approval with payment of all applicable fees. The application shall be reviewed by the Planning Department for completeness and consistency with the requirements and standards of this Chapter. Upon determination by the Planning Department that the application is complete, the application will proceed through the land use process.
- (3) Appeal of Director's determination. The Planning Department in its administrative approval process outlined in Section 16-252(d)(4), may apply reasonable conditions to the approval as deemed necessary to ensure conformance with applicable review criteria outline within this Subsection 16-252(g). If the Planning Department determines that the proposed wireless telecommunication services facilities and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Planning Department administrative approval, the applicant may apply for appeal process outlined within this Subsection 16-252(d)(6) and such application must be made within ten (10) calendar days of the day on which the Planning Department's decision is rendered.
- (4) Administrative Review Process. Applicant shall provide to the Planning Department with the application, address labels of all adjacent property owners with appropriate postage, for mailing notice of the application to adjacent property owners (excluding public rights-of-way). The public notice shall summarize the plan and provide notice of their right to comment on or object to the plan by filing such comments or objections with the Planning Department within seven (7) business days of the date the notice is posted on the property. Such notice shall be provided by: (a) prominently and visibly posting the property subject to the application; and (b) delivering notice either by regular mail or personal delivery. Applications shall be reviewed within ten (10) business days, and the Planning department shall, in writing, approve, deny or conditionally approve the application based on the criteria set forth within this Chapter.
- (5) Building permit. A building permit application cannot be filed unless and until final land use approval has been granted. When applying for building permits, the applicant shall submit a signed letter indicating his/her compliance with all conditions of approval, as well as a copy of the signed document granting the land use approval for the subject building permit application.
- (6) Appeal Process. Appeals from a decision of the Planning Department approving or denying an application for a shall be made to the Board of Trustees in writing by filing the same with the Town Clerk within ten (10) days from the date of the decision appealed from. All appeals shall be heard by the Board of Trustees de novo and shall be conducted at a public meeting within thirty (30) days from the filing of the appeal, or as soon thereafter as can be accommodated. The Town Clerk shall notify the appellant and, if different, the permit applicant by certified mail, return receipt requested, of the date the appeal shall be heard at least seven (7) days in advance of the hearing. The decision of the Board of Trustees on appeal may be issued orally, but shall thereafter be reduced to writing within a reasonable period of time after the conclusion of the hearing and mailed to the appellant and, if different, the permit applicant. Such appeal review may be approved, approved with conditions or denied based on conformance with the applicable review standards outline with in this Chapter.

(e) Application. An application for approval of new, modified or additional wireless telecommunication services facilities and/or equipment shall follow the submittal process set forth in section 16-252(d).

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Also, wireless telecommunication services facilities and equipment applications shall contain at least the following information:

- (1) Site plan or plans drawn to a scale of one (1) inch equals ten (10) feet or one (1) inch equals twenty (20) feet, including "before and after" photographs (simulations) specifying the location of antennas, support structures, transmission buildings and/or other accessory uses, access, parking, fences, signs, lighting, landscaped areas and all adjacent land uses within one hundred fifty (150) feet. Such plans and drawings should demonstrate compliance with the review standards of this Section.
- (2) Site improvement survey including topography and vegetation showing the current status, including all easements and vacated rights of way, of the parcel certified by a registered land surveyor, licensed in the State of Colorado.
- (3) Landscape plan drawn to a scale of one (1) inch equals ten (10) feet or one (1) inch equals twenty (20) feet, including "before and after" photographs (simulations) indicating size, spacing and type of plantings and indicating steps to be taken to provide screening as required by the review standards of this Section. The landscape plans shall also indicate the size, location and species of all existing vegetation and whether each of those indicated are proposed for removal (indicate proposed mitigation), relocation (indicate from and to) or preservation. The appropriate decision-making authority (Planning Department or Board of Trustees, as applicable) shall determine if a landscape plan is necessary; for instance, when an antenna is to be attached to a building, this requirement may be waived.
- (4) Elevation drawings or "before and after" photographs/drawings simulating and specifying the location and height of antennas, support structures, transmission buildings and/or other accessory uses, fences and signs.
- (5) Lighting plan and photometric study indicating the size, height, location and wattage of all proposed outdoor lighting sources. This study shall also include a graphic indicating the spread and degree/intensity of light from each source/fixture.
- (6) Structural integrity report from a professional engineer licensed in the State of Colorado documenting the following:
  - a. Tower height and design, including technical, engineering, economic and other pertinent factors governing selection of the proposed design;
  - b. Total anticipated capacity of the structure, including number and types of antennas which can be accommodated;
  - c. Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris in the event of failure; and
  - d. Specific design and reconstruction plans to allow shared use. This submission is required only in the event that the applicant intends to share use of the facility by subsequent reinforcement and reconstruction of the facility.
- (7) FAA and FCC coordination. Applicant shall submit documentation showing compliance with Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) regulations, indicating that:
  - a. (Required only if the facility is near an airfield per FAA distance requirements) The application has not been found to be a hazard to air navigation under Part 77, Federal Aviation, Federal Aviation Regulations, or stating that no compliance with Part 77 is required and the reasons therefore. A letter from the Central Colorado Regional Airport Administrator shall also be required if the appropriate decision-making authority (Planning Department or Board of Trustees, as applicable) determines that the proposed facility may impact airport operations;

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- b. (Required of all wireless telecommunication services facility or equipment applicants) The application complies with the regulations of the Federal Communications Commission with regard to maximum radio frequency and electromagnetic frequency emissions or a statement from the applicant that no such compliance is necessary and the reasons therefore.
  - (8) Evidence that an effort was made to locate on an existing wireless telecommunication services facility site including coverage/interference analysis and capacity analysis and a brief statement as to other reasons for success or no success.
  - (9) Written documentation in the form of a signed affidavit demonstrating a good faith effort in locating facilities in accordance with site selection order of preference outline within this Section 16-252(f)(2).
  - (10) All companies and providers of wireless telecommunication service facilities and equipment within the Town shall, during their pre-application meeting for a new facility, be prepared to verbally outline, to the best of current knowledge, a master or long-term plan for all proposed sites within a three-mile radius of the Town. In particular, companies and providers should be prepared to discuss their need for the proposed site and how it fits into their existing and proposed coverage grids.
- (f) General provisions and requirements. The following provisions apply to all wireless telecommunication services facilities and equipment applications, sites and uses.
- (1) Prohibitions/Restricted.
    - a. Lattice antenna towers and Guyed Mast Towers are prohibited within the Town. For existing Nonconformities, see article VII of Chapter 16
    - b. Towers (support structures) shall be prohibited in the following Zone Districts: Low - Density Residential (R-1); General - Density Residential (R-2); High - Density Residential (R-3); General Business (B-1); and within the Old Town Overlay.
    - c. Building-mounted, roof-mounted facilities shall be prohibited in the following Zone Districts: Low - Density Residential (R-1); General - Density Residential (R-2); High - Density Residential (R-3). In residential zone districts customer premises equipment is allowed but must meet all applicable guidelines outlined in this chapter.
    - d. Only one (1) Mono-pole tower is allowed in the highway Business (B-2) Zone district and shall meet the requirements outlined with in this Section 16-252 (g).
    - e. All wireless telecommunication services facilities and equipment not prohibited by the preceding statements shall be allowed in all other zone districts subject to review and approval by the appropriate decision-making authority (Planning Department or Board of Trustees, as applicable) pursuant to the provisions, requirements and standards of this Chapter, including consistency with the dimensional requirements of the underlying zone district.
  - (2) Site selection. Wireless communication facilities shall, in accordance with local zoning requirements, be located in the following order of preference:

First: On existing structures such as buildings, communication towers, flagpoles, church steeples, cupolas, ball field lights, water towers, etc.

Second: In locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.

Least: On vacant ground or highly visible sites without significant visual mitigation and where screening/buffering is difficult at best.



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- (3) Interference. Radio interference is prohibited. The applicant shall meet FCC requirements for radio interference and if the proposed wireless telecommunication services facilities or equipment is within one thousand (1,000) feet of the Town's radio controlled model airplane runway, the applicant must provide satisfactory documentation evidencing that the facilities or equipment will not interfere with the model airplanes' radio frequencies.
- (4) Airports and flight paths. Wireless telecommunication services facilities and equipment shall not present a hazard to air navigation under Part 77, Federal Aviation, Federal Aviation Regulations.
- (5) Public buildings, structures and rights-of-way. Leasing of public buildings, publicly owned structures and/or public rights-of-way for the purposes of locating wireless telecommunication services facilities and/or equipment is encouraged. In cases where a facility is proposed on Town property, specific locations and compensation to the Town shall be negotiated in lease agreements between the Town and the provider on a case-by-case basis and would be subject to all of the review criteria contained in this Section 16-252(g). Such agreements would not provide exclusive arrangements that could tie up access to the negotiated sites or limit competition and must allow for the possibility of "co-locating" (sharing of facilities) with other providers as described with in this Section 16-252 (f)(6) below.
- (6) Co-location. Co-location or sharing, of facilities with other providers is encouraged. Co-location can be achieved as either building-mounted, roof-mounted or ground-mounted facilities. In designing poles, applicants are strongly encouraged to consider the possibility of present or future co-location of other wireless communication equipment by structurally overbuilding in order to handle the loading capacity of additional antennas, for the use of the company and for other companies to use as well. Applicants shall use good faith efforts to negotiate lease rights to other telecommunications users who desire to use the monopole. Co-location on an existing support structure (tower) shall be permitted as an accessory use. A maximum twenty-four-inch diameter dish antennas are permitted per monopole antenna. Projections of any type on the monopole, which are not antennas, are strongly discouraged.

Multiple use facilities are encouraged as well. Wireless telecommunication services facilities and equipment may be integrated into existing or newly developed facilities that are functional for other purposes, such as ball field lights, flagpoles, church steeples, water towers, etc. All multiple use facilities shall be designed to make the appearance of the Antenna relatively inconspicuous.

The co-location requirement may be waived by the appropriate decision-making authority (Planning Department or Board of Trustees, as applicable) upon a showing that either federal or state regulations prohibit the use, the proposed use will interfere with the current use, the proposed use will interfere with surrounding property or uses, the proposed user will not agree to reasonable terms or such co-location is not in the best interest of the public health, safety or welfare.

- (7) Maintenance. All towers, antennas, related facilities and equipment and subject sites shall be maintained in a safe and clean manner in accordance with project approvals and building codes. The operator/property owner shall be responsible for maintaining free from graffiti, debris and litter, those areas of the site which are adjacent to the premises over which he or she has control. The applicant shall be responsible for reasonable upkeep of the facility and subject property. All towers, antennas and related facilities shall be subject to periodic inspection by the Town to ensure continuing compliance with all conditions of approval and requirements of this Section.
- (8) Abandonment and removal. All required approvals shall be in effect only so long as the antennas and other structures are operated at the site. Facilities that are not in use for ninety (90) consecutive days for cellular communication purposes shall be considered abandoned and shall be removed by the facility owner. The site shall be restored to the condition it was in prior to the installation/location of the facility. Such removal shall be carried out in accordance with proper health and safety requirements.

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The owner of such facilities shall provide the Town of Buena Vista with a copy of the notice to the FCC of the intent to cease operations within thirty (30) days of delivery of the notice to the FCC. The operator shall have ninety (90) days to remove the facility. The Town shall determine whether or not the facility is abandoned.

If a facility falls into disrepair, repairs are required to be completed within thirty (30) days of the damage occurring. If the cell tower owner is unable to repair the damage within thirty (30) days of occurrence, a request for extension of time to complete the repairs may be submitted to the Town within thirty (30) days of the structure. If damage to the structure is not repaired within thirty (30) days, and a request for extension is not filed with the Town, the structure shall be determined to be abandoned.

If the owner fails to remove the wireless telecommunication services facilities and/or equipment within the timeframe identified in this section, the Town Administrator or Board of Trustees may cause the demolition and/or removal of all telecommunications facilities and/or towers from the site and recover its costs of demolition and removal from the facility and/or property owner.

(9) Conditions and limitations. The Town shall reserve the right to add, modify or delete conditions after the approval of a request in order to advance a legitimate Town interest related to health, safety or welfare. Prior to exercising this right, the Town shall notify the owner and operator in advance and shall not impose a substantial expense or deprive the affected party of a substantial revenue source in the exercising of such right.

Approval by the appropriate decision-making authority (Planning Department or Board of Trustees, as applicable) for a wireless telecommunication services facility and/or equipment application shall not be construed to waive any applicable zoning or other regulations; and wherein not otherwise specified, all other requirements of this Code shall apply. All requests for modifications of existing facilities or approvals shall be submitted to the Planning Department for review under all provisions and requirements of this Section. If other than minor changes are proposed, a new, complete application containing all proposed revisions shall be required.

(g) Review standards. The following standards are designed to foster the Town's safety and aesthetic interests without imposing unreasonable limitations on wireless telecommunication services facilities and equipment:

| Zoning District | Towers allowed (Lattice & Guyed mast towers are prohibited) | Height Tower       | Setbacks Towers    | Alternative tower structure | Height Roof Mounted  | Setbacks Wall/ Roof Mounted | Building-mounted, roof-mounted facilities |
|-----------------|---|--------------------|--------------------|-----------------------------|--|-----------------------------|---|
| R-1             | Towers Not Allowed  | Towers Not Allowed | Towers Not Allowed | Towers Not Allowed          | Not Allowed (a)  | Not Allowed (a)             | Not Allowed (a)                           |
| R-2             | Towers Not Allowed  | Towers Not Allowed | Towers Not Allowed | Towers Not Allowed          | Not Allowed (a)  | Not Allowed (a)             | Not Allowed (a)                           |
| R-3             | Towers Not Allowed  | Towers Not Allowed | Towers Not Allowed | Towers Not Allowed          | Not Allowed (a)  | Not Allowed (a)             | Not Allowed (a)                           |
| B-1             | Towers Not Allowed  | Towers Not Allowed | Towers Not Allowed | Towers Not Allowed          | Antenna: 5ft above highest portion of the roof<br>Whip antennas: 10 ft above highest portion of the roof (d) | None                        | Allowed                                   |

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|                      |                       |  |                         |                          |   |      |         |
|----------------------|-----------------------|--|-------------------------|--------------------------|---|------|---------|
| B-2                  | 1 per B-2             | See<br>Dimensional<br>Standards (e)                        | Min: 50 ft<br>(b)(c)(f) | Yes                      | Antenna: 5ft<br>above highest<br>portion of the<br>roof<br>Whip<br>antennas: 10 ft<br>above highest<br>portion of the<br>roof (d) | None | Allowed |
| I-1                  | Allowed               | 75 ft  | Min: 50 ft<br>(b)(c)(f) | Not<br>Required          | Antenna: 5ft<br>above highest<br>portion of the<br>roof<br>Whip<br>antennas: 10 ft<br>above highest<br>portion of the<br>roof (d) | None | Allowed |
| S-1                  | Allowed               | Rodeo Grounds:<br>250ft<br>All others S-1<br>Zones: 35 ft. | Min: 50 ft<br>(b)(c)(f) | Yes                      | Antenna: 5ft<br>above highest<br>portion of the<br>roof<br>Whip<br>antennas: 10 ft<br>above highest<br>portion of the<br>roof (d) | None | Allowed |
| Overlay:<br>Old Town | Towers Not<br>Allowed | Towers Not<br>Allowed                                      | Towers Not<br>Allowed   | Towers<br>Not<br>Allowed | N/A   | N/A  | N/A     |

(a) Customer premises equipment is allowed but must meet all applicable guidelines outlined in this chapter. xln

(b) Must meet underling zoning standards. xln

(c) If the property is next to any residentially zoned properties, the tower's setback distance must be at least three (3) times the monopole antenna's height. xln

(d) Board of Trustees may approve a taller antenna height. xln

(e) Or thirty-five (35) feet, whichever is more restrictive. xln

(f) Setback from any public road, as measured from the right-of-way line, shall be at least equal to the height of the monopole antenna. xln

- (1) Setbacks. At a minimum, all wireless telecommunication services facilities and equipment shall comply with the minimum setback requirements of the underlying zone district; if the following requirements are more restrictive than those of the underlying zone district, the more restrictive standard shall apply.

- a. All facilities shall be setback fifty (50) feet from any property lines, except when roof-mounted (above the eave line of a building). Flat-roof mounted facilities visible from ground level within one hundred (100) feet of said property shall be concealed to the extent

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possible within a compatible architectural element, such as a chimney or ventilation pipe or behind architectural skirting of the type generally used to conceal HVAC equipment. Pitched-roof-mounted facilities shall always be concealed within a compatible architectural element, such as chimneys or ventilation pipes.

- b. Monopole antenna towers shall be set back from any residentially zoned properties a distance of at least three (3) times the monopole antenna's height (i.e., a sixty (60) foot setback would be required for a twenty (20) foot monopole antenna) and the setback from any public road, as measured from the right-of-way line, shall be at least equal to the height of the monopole antenna.
  - c. No wireless communication facility may be established within one thousand (1,000) feet of any existing, legally established wireless communication facility except when located on the same building or structure.
  - d. No portion of any antenna array shall extend beyond the property lines.
- (2) Height. The following restrictions shall apply:
- a. Wireless telecommunication services facilities and/or equipment not attached to a building shall not exceed thirty-five (35) feet in height or the maximum permissible height of the given Zone District, whichever is more restrictive; except the height limit for the Town's rodeo grounds in the S-1 Zone district shall be two hundred fifty (250) feet, and the height limit in the Industrial (I-1) zone district shall be seventy-five (75) feet.
  - b. Whenever a wireless telecommunication services antenna is attached to a building roof, the antenna and support system for panel antennas shall not exceed five (5) feet above the highest portion of that roof, including parapet walls and the antenna and support system for whip antennas shall not exceed ten (10) feet above the highest portion of that roof, including parapet walls.
  - c. The Board of Trustees may approve a taller antenna height than stipulated in (b) above if the Board determines that the antenna is suitably camouflaged and allows for co-location of at least two (2) facilities, and documentation is provided indicating FAA and FCC rules and regulation compliance. Camouflaging requirements are set forth in 16-252(g)(3)-(4).
  - d. Support and/or switching equipment shall be located inside the building, unless it can be fully screened from view as provided in the "Screening" standards outline with in this Section 16-252(g)(5) below.
- (3) Architectural compatibility. Whether manned or unmanned, wireless telecommunication services facilities shall be consistent with the architectural style of the surrounding architectural environment (planned or existing) considering exterior materials, roof form, scale, mass, color, texture and character. In addition:
- a. All towers in the permitted zone districts besides the Industrial (I-1) must be an Alternative tower structure. The applicant must present at a minimum, two (2) designs for the appropriate decision-making authority (Planning Department or Board of Trustees, as applicable) to pick from.
  - b. If such facility is accessory to an existing use, the facility shall be constructed out of materials that are equal to or of better quality than the materials of the principal use that meet building codes and safety standards.
  - c. Wireless telecommunication services equipment shall be of the same color as the building or structure to which or on which such equipment is mounted or as required by the appropriate decision-making authority (Planning Department or Board of Trustees, as applicable).

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- d. Whenever wireless telecommunication services equipment is mounted to the wall of a building or structure, the equipment shall be mounted in a configuration designed to blend with and be architecturally integrated into a building or other concealing structure, be as flush to the wall as technically possible and shall not project above the wall on which it is mounted.
  - e. Monopole support buildings, which house cellular switching devices and/or other equipment related to the use, operation or maintenance of the subject monopole antenna, shall be designed to match the architecture of adjacent buildings. If no recent and/or reasonable architectural theme is present, the appropriate decision-making authority (Planning Department or Board of Trustees, as applicable) may require a particular design that is deemed to be suitable to the subject location.
  - f. All utilities associated with wireless communication facilities or equipment shall be underground (also see "Screening" below).
- (4) Compatibility with the natural environment. Wireless telecommunication services facilities and equipment shall be compatible with the surrounding natural environment considering land forms, topography and other natural features and shall not dominate the landscape or present a dominant silhouette. In addition:
- a. Site disturbances shall be minimized and existing vegetation shall be preserved or improved to the extent possible, unless it can be demonstrated that such disturbance to vegetation and topography results in less visual impact to the surrounding area.
  - b. Surrounding view planes shall be preserved to the extent possible.
  - c. All wireless telecommunication services facilities and equipment shall comply with the Federal Communication Commission's regulations concerning maximum radio frequency and electromagnetic frequency emissions.
- (5) Screening. Roof-and-ground-mounted wireless telecommunication services facilities and equipment, including accessory equipment, shall be screened from adjacent and nearby public rights-of-way and public or private properties by paint color selection, parapet walls, screen walls, fencing, landscaping and/or berming in a manner compatible with the building's and/or surrounding environment's design, color, materials, texture, land forms and/or topography, as appropriate or applicable. In addition:
- a. Whenever possible, if monopole antennas are necessary for the support of antennas, they shall be located near existing utility poles, trees or other similar objects; consist of colors and materials that best blend with their background; and, have no individual antennas or climbing spikes on the pole other than those approved by the appropriate decision-making authority (Planning Department or Board of Trustees, as applicable).
  - b. For ground-mounted facilities, landscaping may be required to achieve a total screening effect at the base of such facilities or equipment in order to screen the mechanical characteristics; a heavy emphasis on coniferous plants for year-round screening may be required. Landscaping shall be of a type and variety capable of growing within one (1) year to a landscape screen which satisfactorily obscures the visibility of the facility. Please refer to Section 16-255 for landscaping standards.
  - c. Unless otherwise expressly approved, all cables for a facility shall be fully concealed from view underground or inside of the screening or monopole structure supporting the antennas; any cables that cannot be buried or otherwise hidden from view shall be painted to match the color of the building or other existing structure.
  - d. Chain link fencing shall be unacceptable to screen facilities, support structures or accessory and related equipment (including HVAC or mechanical equipment present on support buildings); fencing material, if used, shall be six (6) feet in height or less and shall

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consist of wood, masonry, stucco, stone or other acceptable materials that are opaque. A fence permit shall be required if fencing is proposed. See Article XI of Chapter 18

- e. Notwithstanding the foregoing, the facility shall comply with all additional measures deemed necessary to mitigate the visual impact of the facility. Also, in lieu of these screening standards, the appropriate decision-making authority (Planning Department or Board of Trustees, as applicable) may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls, sign and structural applications, manufactured devices and other features designed to screen, camouflage and buffer antennas, poles and accessory uses. For example, the antenna and supporting structure or monopole antenna may be of such design and treated with an architectural material so that it complies with an Alternative tower structure. The plan should accomplish the same degree of screening achieved by meeting the standards outlined above.
- (6) Lighting and signage. In addition to other applicable sections of the code regulating signage or outdoor lighting, the following standards shall apply to wireless telecommunication services facilities and equipment:
- a. Wireless telecommunication services facilities shall not be illuminated, except in accordance with applicable state and federal regulations or by approval from appropriate decision-making authority (Planning Department, or Board of Trustees, as applicable). Telecommunications facilities including accessory buildings and equipment shall not incorporate dusk to dawn security lighting. The facilities may utilize manual switch or motion activated exterior illumination for repair and maintenance purpose. If lighting is proposed it shall meet these requirements:
    - 1. The light source for security lighting shall feature down-directional, sharp cut-off luminaires to direct, control, screen or shade in such a manner as to ensure that there is no spillage of illumination off-site. Also refer to Section 18-295(6).
    - 2. Light fixtures, whether free standing or tower-mounted, shall not exceed twelve (12) feet in height as measured from finished grade.
  - b. The display of any sign or advertising device other than public safety warnings, certifications or other required seals on any wireless communication device or structure is prohibited.
  - c. The telephone numbers to contact in an emergency shall be posted on each facility in conformance with the provisions outline in Section 16-242
- (7) Access ways. In addition to ingress and egress requirements of the Building Code, access to and from wireless telecommunication services facilities and equipment shall be regulated as follows:
- a. No wireless communication device or facility shall be located in a required parking, maneuvering or vehicle/pedestrian circulation area such that it interferes with or in any way impairs the intent or functionality of the original design.
  - b. The facility must be secured from access by the general public but access for emergency services must be ensured. Access roads must be capable of supporting all potential emergency response vehicles and equipment.
  - c. Any easements required for ingress and egress and for electrical and telephone shall be recorded at the County Clerk and Recorder's Office prior to the issuance of building permits.

(Ord. 2 § 1, 2014)

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**Editor's note**— Ord. 2 § 1, 2014, repealed the former § 16-252, and enacted a new section as set out herein. The former § 16-252 pertained to personal wireless telecommunication facilities and derived from Ord. 15-2000 § 1

**Sec. 16-253. Measuring building height.**

The height of buildings shall be measured on a vertical plane from the average natural or finished grade, whichever is lower, to the highest point on the roof surface. Chimneys, antennae, flag poles, bell towers, steeples, vents or other roof or building appurtenances extending from the surface of the roof shall not be measured in calculating building height; however, such appurtenances shall not extend more than ten (10) feet above the building height absent a duly approved variance; except for mechanical equipment, which may not extend more than five (5) feet above the building height.

(Ord. 11-2001 §12)

**Sec. 16-254. Home occupations.**

A customary incidental home occupation may only be conducted in accordance with the provisions of this Section.

(1) Operational standards.

- a. The home occupation shall be incidental and secondary to the use of a dwelling for dwelling purposes;
- b. The home occupation shall not change the essential residential character of a dwelling;
- c. The on-site activities of the home occupation shall be carried on entirely within the dwelling or in an attached or a detached building on the subject premises, and that portion of the dwelling and/or the attached or detached building used for a home occupation shall comply with all building, fire, safety and other codes applicable to the particular home occupation;
- d. There shall be no storage or display of any goods, products, equipment or materials outside of the dwelling, garage or other building on the property containing the home occupation, and no hazardous or dangerous materials, or such quantities of same, not customarily associated with a residential use shall be stored or used on the premises;
- e. Absent a variance, the home occupation shall not occupy more than twenty-five percent (25%) of the total gross floor area of the dwelling and/or other structure in which the home occupation is conducted, or five hundred (500) square feet, whichever is less;
- f. The home occupation may be allowed no more than one (1) nonilluminated freestanding or wall sign not to exceed two (2) square feet;
- g. The home occupation shall not cause any use or activity which is inconsistent with the residential zone in which it is located, or which disrupts the neighborhood by the creation of traffic, congestion, dust, smoke, vibration, noise from equipment, excessive lighting, offensive odor or electrical interference.
- h. All persons engaged in a home occupation must obtain and maintain all necessary business licenses prior to and during the operation of the home occupation;
- i. The home occupation shall not operate during such hours as to disturb neighbors or alter the residential character of the subject premises;
- j. The home occupation shall not employ more than two (2) persons on site who are not full-time residents of the dwelling/property on which the home occupation occurs;

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- k. Vehicle traffic generated by the home occupation shall not significantly increase over the traffic level normally associated with the subject premises and shall not create or cause a need for new or additional off-site parking. No use or storage of heavy equipment or commercial or heavy trucks or trailers shall be permitted or allowed; and
  - l. No sales of goods or products shall be allowed on the premises of the home occupation, except those incidental to any service provided by the home occupation.
- (2) Review of home occupation—complaints and violations.
- a. The operation of a home occupation may be subject to review upon written complaint. In the event a complaint is received by the Town containing substantial credible information illustrating a possible violation of the terms and/or operating standards contained in this Section, the Town Administrator shall cause notice of such complaint to be served personally or by certified mail, return receipt requested, on the operator of the home occupation. The notice shall describe in reasonable detail the complaint concerning the home occupation and command the operator to appear before the Board of Trustees at a public hearing to show cause why the operation of the home occupation should not be suspended, modified or terminated. The notice shall be issued not less than ten (10) days prior to the hearing and shall contain the date, time and place for same. A copy of the notice shall also be timely provided in advance of the hearing to the person who submitted the subject complaint. The Board of Trustees may suspend, modify or terminate the operation of a home occupation upon a finding that the terms of this Section have been violated. All decisions of the Board of Trustees under this Section shall be reduced to writing and copies thereof shall be promptly mailed or personally delivered to the operator and complainant.
  - b. Violations of the terms or conditions of this Section may be punishable under the general penalty provisions of this Code.

(Ord. 2-2002 §2)

#### **Sec. 16-255. Landscaping requirements.**

- (a) Purpose. The purpose of this Section is to provide standards for landscaping of all development within the Town so as to maintain the character of residential neighborhoods, commercial centers and industrial areas. This shall be accomplished by requiring minimum planting, buffering and screening around and within residential and nonresidential developments and their associated parking areas, and by requiring long-term maintenance of landscaped areas.
- (b) Minimum landscape area standards. The minimum landscape area and number of required trees shall be provided per required landscaped area in various zone districts:

Table 16-1

| Zone District                    | Minimum Landscape Area | Number of Trees Per Required % of Landscaped Area |
|----------------------------------|------------------------|---|
| Single-Family Residential (R-1)  | 25% *                  | 2 per lot   |
| Medium Density Residential (R-2) | 25% *                  | 2 per lot   |



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|                                |        |                     |
|--------------------------------|--------|---------------------|
| High Density Residential (R-3) | 20%    | 1 per 800 sq. ft.   |
| Commercial (B-1)               | 10% ** | 1 per 300 sq. ft.   |
| Commercial (B-2)               | 10% ** | 1 per 600 sq. ft.   |
| Industrial (I)                 | 10% ** | 1 per 1,000 sq. ft. |

\* Exempted from Subsection 16-255(d), landscaping standards.

\*\* Development that utilizes 100% lot coverage or a zero front setback shall be exempt from the requirements of Table 16-1.

(c) Applicability. The landscape standards of this Section shall apply to all development within the Town, except as follows:

- (1) Old Town (OT). Development in the OT Overlay District that utilizes a zero (0) front setback, one hundred percent (100%) lot coverage or is located along E. Main Street shall be exempt from the landscaping standards of this Section. All new residential development in the Old Town overlay shall be required to plant two (2) additional trees on each lot, one (1) of which shall be located in the front of the structure. Street trees shall count towards this requirement. All other commercial development or multifamily development shall be required to provide a minimum of a ten-percent (10%) landscape area and plant trees and shrubs in accordance with parking lot requirements of Subsection (d) below. All new development shall be stabilized or landscaped to control runoff onto neighboring properties.
- (2) Single-family or duplex dwelling. The construction, reconstruction, modification, conversion, structural alteration, relocation or enlargement of a single-family or duplex dwelling on a lot of record shall only be required to provide a minimum of two (2) additional trees on each lot, one (1) of which shall be located in the front of the structure. Street trees shall count towards this requirement.
- (3) Change of use, maintenance and repairs. Changes of use, maintenance and repairs which do not expand the use or size of the property by more than ten percent (10%) shall be exempt from the landscaping standards of this Section.

(d) Landscaping standards.

- (1) Landscape plan. A landscape plan shall be submitted for review as part of an application for any development within the Town, except for development specifically exempted in Paragraphs (c)(1), (2) and (3) above. The landscape plan shall contain the following information:
  - a. Drawing. A drawing identifying all existing deciduous trees and coniferous trees of four (4) inches in caliper or greater and illustrating the location, size and type of all proposed landscaping. The drawing shall identify all existing vegetation which is to be preserved, demonstrate how irrigation is to be provided and provide a legend.
  - b. Calculations. A written summary of all calculations used to determine the landscaping required for the site.

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- c. Erosion control. A description of how erosion will be controlled on site, during construction and following completion of development.
  - d. Maintenance program. A maintenance program shall be provided with a description of the proposed program to maintain the landscaping after it has been installed for a minimum of two (2) planting seasons.
- (2) Vegetation and site standards:
- a. Site stabilized. All new development shall be stabilized or landscaped to control runoff onto neighboring properties or public rights-of-way.
  - b. Plants compatible with local conditions. All plants depicted on the landscape plan shall be of a variety which is compatible with local climate and the soils, drainage and water conditions of the site in accordance with the Buena Vista Planting Guide. Trees or shrubs that are not recommended in the Buena Vista Planting Guide shall not count towards the required trees and shrubs of this Chapter.
  - c. Deer fencing. Wire mesh deer fencing shall be installed around all new tree plantings to provide adequate protection.
  - d. Save existing vegetation. The landscape plan shall be designed to save all existing healthy trees and shrubs whenever possible. Existing trees and shrubs that are four (4) inches in caliper or more which are preserved shall count toward the landscaping standards of this Section.
  - e. Water conservation.
    - 1. The total amount of high water use zones on a property may not exceed fifty percent (50%) of the total landscaped area. The total amount of high water use turf grass may not exceed thirty percent (30%) of the total landscaped area. Turf grass areas designated for high use or a specific recreational use shall be excluded from the total landscaped area under this requirement.
    - 2. Plants or turf grass from a high water use zone may not be planted on slopes or berms at a 4:1 slope or steeper.
  - f. Obstructions prohibited.
    - 1. Fire hydrants and utilities. Landscaping shall be located so as not to obstruct fire hydrants or utility boxes and so it will not grow into any overhead utility lines.
    - 2. Curb cuts and intersections. No plant material greater than two (2) feet in height shall be located within the clear sight triangle as defined by this Chapter, or so as to otherwise cause visibility obstructions or blind corners at intersections.
  - g. Minimum size. Trees and shrubs depicted on the landscape plan shall be of the following minimum size at the time of their planting:
    - 1. Deciduous trees. Deciduous trees shall be a minimum of one and one-half (1½) inches in caliper, measured six (6) inches above the ground.
    - 2. Coniferous trees. Coniferous trees shall be a minimum of six (6) feet in height.
    - 3. Shrubs. Shrubs shall be a ten-inch by ten-inch container or larger.
  - h. Parking areas and access. Parking areas and access shall not count towards the minimum landscape area.
  - i. Trash receptacles. Screening shall be provided for all trash receptacles of two (2) cubic yards volume or greater and shall consist of landscaping or a structural visual barrier, such as a fence, to block the view of the trash receptacle and to keep trash contained. One (1)

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side of the screening shall be designed for easy access for trash removal. Any landscaping so provided shall count toward the landscaping standards of this Section.

(3) Landscaping standards applicable to parking areas.

- a. Buffer strip. A landscape buffer shall be required between any parking area, sales lot and property line. The buffer strip shall be a minimum of two (2) feet for nonvegetated areas and a minimum of five (5) feet for vegetated areas. Buffer strips shall be required to delineate access to a public street. Design ideas for buffer strips can be found in the Buena Vista Planting Guide. This buffer strip area shall count toward the minimum landscaping area.
- b. Interior landscaping. In addition to the required minimum landscape area standards of Table 16-1, any parking area containing more than twenty (20) parking spaces shall be required to plant the required additional number of trees and shrubs and provide landscaped islands in accordance with Table 16-2 as follows:

Table 16-2

| Parking Spaces | Required Additional Trees and Shrubs | Required Minimum Square Footage of Landscaped Islands * |
|----------------|--------------------------------------|---|
| 20—30          | 1 tree, 3 shrubs                     | 25 square feet  |
| 31—40          | 2 trees, 6 shrubs                    | 50 square feet  |
| 41—50          | 3 trees, 9 shrubs                    | 75 square feet  |
| 51—75          | 4 trees, 12 shrubs                   | 100 square feet   |
| 76—100         | 6 trees, 20 shrubs                   | 150 square feet   |
| 100 or more    | 10 trees, 40 shrubs                  | 250 square feet   |

\* Landscaped islands count towards the minimum landscape area.

- c. Dispersed. The landscaped islands shall be dispersed throughout the parking area and in the parking area in such a way as to provide visual relief, particularly of parking aisles, by using flowering ornamental plantings and to provide physical relief by using seasonal shade trees.

(4) Installation and maintenance requirements.

- a. Required time for completion - date of occupancy. Landscaping required for all uses shall be installed within six (6) months of its initial date of occupancy, excluding the months of October through April.

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- b. Irrigation systems and plans. If an irrigation system is installed, the system shall meet the following minimum requirements.
  - 1. Backflow preventer. An approved backflow prevention device shall be installed with all irrigation systems.
  - 2. Low-volume, drip or subsurface irrigation systems must be used in all nonturf grass areas and in landscaped areas where any one (1) dimension is less than six (6) feet in width and surrounded by impervious surfaces.
  - 3. Any landscaping areas that are being dedicated or will be in the future maintained by the Town in association with a development shall be required to install an irrigation system. The plans for this irrigation system must be approved by the Public Works Department. This excludes nondisturbed areas, nature areas or areas located in the floodplain.
- c. The portion of the public right-of-way, if any, between the property line and the street may be used for landscaping purposes and shall be maintained and may be improved as such by the abutting property owner. The replacement of any damaged landscaping due to work in the right-of-way is the responsibility of the private property owner.
- d. Landowner responsible. Maintenance of landscaped areas shall be the responsibility of the landowner.
- e. Replacement. Landscaping which does not survive two (2) planting seasons shall be replaced within three (3) months, or during the next planting season. The replacement vegetation shall be similar in size and type to the vegetation which did not survive, so the integrity of the approved landscape plan is preserved.

(Ord. 13-2010 §2; Ord. 5 §2, 2012)

#### **Sec. 16-256. Storage standards and retail display.**

- (a) All unenclosed or outdoor storage shall comply with the following standards:
  - (1) No unenclosed or outdoor storage shall be located along a primary building frontage.
  - (2) All unenclosed or outdoor storage adjacent to a residential zone district or a lot or parcel on which a residential use is existing by right (a permitted use) shall be set back at least fifteen (15) feet from the boundary/property line separating the residential property from the lot or parcel on which the storage is occurring.
  - (3) The stockpiling of decorative rock, bark or wood chips, or soil and similar loose landscaping material, shall be maintained in neat piles not greater than ten (10) feet in height and shall be protected from dispersal by blowing wind and other adverse weather events.
  - (4) Trees, shrubs, flowers and similar live plant products displayed by a nursery and/or a landscaping or garden supply retailer shall not constitute unenclosed or outdoor storage.
  - (5) Vehicles and/or equipment stored in association with a commercial or other nonresidential use and not on retail display within an open sales yard shall be screened by a fence or other acceptable physical barrier six (6) feet in height (unless otherwise permitted by variance), and all such vehicles and equipment shall be stored at their lowest operating height and in a manner that minimizes their visual profile from view.
- (b) All screened storage shall comply with the following standards:

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- (1) All screening shall consist of durable, low-maintenance materials that effectively block the visual observation of the stored materials when viewed at a height of six (6) feet above finished or natural grade at distances up to and including forty (40) feet from the screening.
  - (2) No stored material shall be stacked or stored so as to exceed the height of the screening.
  - (3) Screening may consist of fencing, walls or other structures. All screening shall be maintained in good and effective condition.
  - (4) Chain-link fencing may be used for screening if fitted with an effective opaque screen. However, chain-link fencing fitted with plastic, wood, vinyl or metal slat inserts shall not be acceptable.
  - (5) Wood fences used for screening shall be made of natural, pressure-treated or manufactured (recycled) wood of sufficient quality and durability to withstand prolonged exposure to the weather.
  - (6) The Building Official may approve alternative screening materials and/or methods upon written application. All alternative screening shall effectively serve and satisfy the intent and purposes of this Section.
  - (7) All screened storage adjacent to a residential zone district or a lot or parcel on which a residential use is existing by right (a permitted use) shall be set back at least fifteen (15) feet from the boundary/property line separating the residential property from the lot or parcel on which the storage is occurring.
- (c) Retail display. Absent an authorized variance, maximum retail display area shall not exceed one hundred and fifty (150) square feet for buildings with less than fifty-five (55) linear feet of primary building frontage, or two and three-quarters ( $2\frac{3}{4}$ ) square feet for each one (1) foot of primary building frontage for buildings with primary building frontage of fifty-five (55) linear feet or greater.

(Ord. 6-2003 §10)

#### **Sec. 16-257. Accessory dwelling units (ADUs).**

- (a) Accessory dwelling units are intended to provide increased affordable housing opportunities within the Town and to facilitate housing in close proximity to places of employment.
- (b) ADUs shall contain not more than eight hundred fifty (850) square feet and not less than four hundred (400) square feet. Only one (1) ADU shall be allowed per principal building.
- (c) Each ADU shall contain a kitchen equipped, at a minimum, with an oven, a stove with two (2) burners, a sink and a refrigerator/freezer with a capacity not less than six (6) cubic feet.
- (d) Each ADU shall contain a bathroom equipped with, at minimum, a sink, a toilet and a shower.
- (e) No ADU shall contain more than two (2) bedrooms, and one (1) off-street parking space shall be provided for each bedroom in addition to the required parking space for the principal building/use.
- (f) All water service connections made to an ADU shall comply with the Town's water service connection requirements, and each ADU sharing and/or connected to the water service line/system serving a principal building shall be assessed a one-time water service expansion/ connection fee equal to one-quarter ( $\frac{1}{4}$ ) of the connection fee that would be charged for a new water connection serving the principal building. All sanitary service connections serving an ADU shall comply with the requirements of the Buena Vista Sanitation District.
- (g) ADUs in a Light Industrial (I-1) zone district shall be limited to attached units and shall not be allowed to occupy the ground floor of the primary building. Attached ADUs in the General Business (B-1) and Highway Business (B-2) districts shall not be allowed to occupy the ground level street frontage within a principal building, while detached ADUs must be located in the rear half of the lot or parcel.

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### ARTICLE X Regulations of General Application

- (h) Detached ADUs in a residential zone district must be located in the rear half of the residential lot or parcel unless the ADU is to be located within or above a garage.
- (i) An ADU may not be condominiumized and/or sold separate and apart from the primary building to which it is accessory.
- (j) The design, exterior treatments and color of an ADU shall be the same as, or compatible with, the design and exterior color and treatments of the primary building to which it is accessory.

(Ord. 12-2003 §7)

#### **Sec. 16-258. Crossman's Addition lots.**

The recognition of individual lots (as defined in Section 16-4) in the Crossman's Addition subdivision, as may be the result of the provisions in this Chapter, shall not create any new, or modify any existing, obligation of the Town to provide any public service or public improvement, or to maintain any public improvement, to any such lot located in Crossman's Addition.

(Ord. 9-2004 §4)

#### **Secs. 16-259—16-270. Reserved.**

## **ARTICLE XI Exceptions and Modifications**

[Sec. 16-271. Compliance mandatory - exceptions.](#)

[Sec. 16-272. Front yard setback for dwellings.](#)

[Sec. 16-273. Side yard setback.](#)

[Sec. 16-274. Double-frontage, reverse-corner lots.](#)

[Sec. 16-275. Projections into required open space.](#)

[Sec. 16-276. Rights-of-way.](#)

[Sec. 16-277. Public welfare or convenience.](#)

[Secs. 16-278—16-290. Reserved.](#)

### **Sec. 16-271. Compliance mandatory - exceptions.**

Compliance with the requirements of this Chapter is mandatory, except that under the specific conditions enumerated in this Article, the requirements are waived or modified as so stated.

(Prior code 17.08.005)

### **Sec. 16-272. Front yard setback for dwellings.**

The front yard setback requirements of this Chapter for dwellings shall not apply on any lot where the average setback of existing buildings, located either wholly or in part within one hundred (100) feet on each side of such lot within the same block and zoning district and fronting on the same side of the street, is less than the minimum required setback. In such cases, the setback on such lot may be less than the required setback but not less than the average of the setbacks of the aforementioned existing buildings.

(Prior code 17.08.010)

### **Sec. 16-273. Side yard setback.**

Where a side yard abuts a street, the setback requirement for the side yard shall be the same as the front yard setback requirement for lots or property facing the same street as that abutting the side yard, except as otherwise provided for in Section 16-245.

(Prior code 17.08.020; Ord. 11-2001 §13; Ord. 3-2005 §4; Ord. 16-2005 §2)

### **Sec. 16-274. Double-frontage, reverse-corner lots.**

- (a) Where double-frontage or reverse-corner lots exist, front yard setback requirements shall apply wherever the lot abuts street or highway right-of-way.
- (b) The requirements set forth in this Section shall not apply to the overlay zone districts identified as R-1 OT, R-2 OT and R-3 OT.

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### ARTICLE XI Exceptions and Modifications

(Prior code 17.08.030; Ord. 3-2005 §5; Ord. 16-2005 §4)

#### **Sec. 16-275. Projections into required open space.**

Every part of a required yard shall be open from its lowest point to the sky unobstructed, except as follows:

- (1) The ordinary projection of sills, belt course, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above shall project into a minimum side yard more than twenty-four (24) inches.
- (2) Open or enclosed fire escapes, fireproof outside stairways and balconies projecting into a minimum yard not more than three and one-half (3½) feet, and the ordinary projections of chimneys and flues may be permitted by the Town Administrator where the same are so placed as not to obstruct the sunlight and ventilation.

(Prior code 17.08.040)

#### **Sec. 16-276. Rights-of-way.**

Street, alley, irrigation ditch and highway rights-of-way shall not be considered as part of a lot for any required yard or open space.

(Prior code 17.08.050)

#### **Sec. 16-277. Public welfare or convenience.**

The Board of Trustees may exempt any building or structure from the operation of the provisions of this Chapter upon satisfactory proof presented at a noticed public hearing that such building or structure is reasonably necessary for the convenience or welfare of the public. The Board of Trustees may impose or attach to any exemption such terms and conditions as it deems reasonable and necessary to preserve and advance the purposes of this Chapter and protect the public interest and welfare.

(Prior code 17.08.060; Ord. 11-2001 §13)

#### **Secs. 16-278—16-290. Reserved.**



## **ARTICLE XII Encroachment Permit**

[Sec. 16-291. Uses prohibited without encroachment permit.](#)

[Sec. 16-292. Application for permit.](#)

[Sec. 16-293. Mandatory insurance.](#)

[Sec. 16-294. Outdoor dining.](#)

[Sec. 16-295. General permit requirements.](#)

[Sec. 16-296. Transfer of permit.](#)

[Sec. 16-297. Termination of permit.](#)

[Secs. 16-298, 16-299. reserved.](#)

### **Sec. 16-291. Uses prohibited without encroachment permit.**

- (a) No person shall conduct any activity or enterprise that involves placement of a cart, unrolled blank booth, table, stage or other structure or equipment in the public right-of-way without a valid encroachment permit therefor issued under this Section.
- (b) No person shall install or construct any structure, awning, balcony, occupied colonnade or stoop over or upon the public right-of-way without a valid encroachment permit therefor issued under this Section.

(Ord. 12-2005 §2)

### **Sec. 16-292. Application for permit.**

- (a) Any person who wishes to encroach over or upon the public right-of-way shall apply for and obtain an encroachment permit from the Town Administrator according to the application process established by the Town Administrator. Encroachment permits for permanent structures shall be irrevocable, subject to the provision of adequate insurance. Encroachment permits for nonpermanent structures may be subject to a term as determined by the Town Administrator to ensure that the encroachment remains appropriate for its setting and compliant with the terms of the permit.
- (b) The Town Administrator may establish review guidelines and application submittal requirements, and may also impose conditions on any permit to ensure that permitted encroachments comply with this Code and enhance the proposed location.
- (c) The construction of any permitted encroachment shall be completed within the time period established by the permit, which shall in no event exceed one (1) year, or the permit will automatically expire.
- (d) The Town Administrator may impose a reasonable fee for an application for an encroachment permit, which fee may be amended from time to time.
- (e) The Town Administrator may require proof of authority from any person purporting to sign an application for the use of any person or entity other than the signator.
- (f) The Town Administrator has the discretion to forward any and all encroachment permit applications for review and approval by the Planning and Zoning Commission and/or Board of Trustees.

## CHAPTER 16 - Zoning

### ARTICLE XII Encroachment Permit

- (g) Whenever any permittee desires to change the use or location of the activity authorized by the permit, the permittee shall follow the review and approval process required of a new applicant.

(Ord. 12-2005 §2)

#### **Sec. 16-293. Mandatory insurance.**

The holder of an encroachment permit issued under this Section shall indemnify and hold harmless the Town, its officers, employees and agents, against any and all claims arising from any occurrence occasioned by the permitted use, and shall maintain, during the period of the permit, comprehensive general public liability and property damage insurance naming the Town, its officers, employees and agents as insureds in an amount equal to the limits under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., plus the costs of defense; provided that the insurance is primary insurance and that no other insurance maintained by the Town will be called upon to contribute to loss covered by the policy; and providing for thirty (30) days' notice of cancellation or material change to the Town.

(Ord. 12-2005 §2)

#### **Sec. 16-294. Outdoor dining.**

- (a) In addition to the provisions described above, applications for all outdoor dining encroachment permits shall state the exact dimensions of the proposed encroachment and the distances from the encroachment to existing structures such as benches, tree grates, etc., as well as existing signs and lights. Encroachments may extend into the public right-of-way a distance that allows five (5) feet of unobstructed sidewalk measured from the curb or existing encroachment (such as an existing tree) along the building frontage. In the alternative, the five (5) feet of unobstructed sidewalk may be similarly measured from the building frontage if the applicant wishes the encroachment to front off the curb; provided, however, that at all times pedestrians must have access to a minimum of five (5) feet of unobstructed sidewalk as a thoroughfare between permitted outdoor dining encroachments.
- (b) The outdoor dining permittee shall prominently display the permit.

(Ord. 12-2005 §2)

#### **Sec. 16-295. General permit requirements.**

- (a) A permittee is responsible for maintaining the area within and in proximity to the permitted location in a neat, clean and hazard-free condition, including without limitation disposing of all trash off site.
- (b) The Town Administrator may deny an encroachment permit if the proposed use does not benefit the Town, would constitute a physical hazard to the public health, safety or welfare or would violate any law.

(Ord. 12-2005 §2)

#### **Sec. 16-296. Transfer of permit.**

A permit for a permanent encroachment shall be automatically transferred or assigned with the appurtenant property. A permit for a temporary encroachment is not automatically transferable or

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### ARTICLE XII Encroachment Permit

assignable. The Town Administrator may review a request to transfer or assign a temporary encroachment permit as a new application at his or her discretion.

(Ord. 12-2005 §2)

#### **Sec. 16-297. Termination of permit.**

- (a) Any permit issued hereunder may be revoked by the Town Administrator under the procedures established by the Town Administrator for a violation of this Section or a breach of a condition in the permit. Notice to the Town of cancellation of or material change to any insurance policy in which the Town is named as an insured may result in the immediate revocation of the encroachment license.
- (b) In the event a permitted permanent structure is removed or demolished, the encroachment permit shall expire.
- (c) Upon revocation or expiration of any permit, the permittee shall remove all structures or improvements from the permit area and restore the area to its condition existing prior to issuance of the permit.

(Ord. 12-2005 §2)

**Secs. 16-298, 16-299. reserved.**

## **ARTICLE XIII Sexually Oriented Businesses**

[Sec. 16-300. Location restrictions.](#)

[Secs. 16-301—16-310. Reserved.](#)

### **Sec. 16-300. Location restrictions.**

- (a) Sexually oriented businesses shall only be located within the Industrial (I-1) District not overlaid by planned unit development zoning, and shall be located a minimum of one thousand (1,000) feet from any:
  - (1) Area zoned for residential use;
  - (2) Single-family or multifamily dwelling, whether located within or outside of the Town;
  - (3) Church, public park, community center, recreation facility, publicly owned or maintained building open for use to the general public, or library;
  - (4) State-licensed day care facility;
  - (5) School or educational facility serving persons under eighteen (18) years of age, or property owned by a school or educational facility; or
  - (6) Any other sexually oriented business.
- (b) The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually oriented business and any church, community center, recreation facility, publicly owned or maintained building open for use to the general public, school, school-owned or educational facility-owned property, day care facility, public park, dwelling or residential district shall be measured in a straight line, without regard to intervening structures, from the nearest portion of the structure used for the sexually oriented business to the nearest property line of the church, community center, recreation facility, publicly owned or maintained building open for use to the general public, school, school-owned or educational facility-owned property, day care facility or dwelling, or the nearest boundary of the public park or residential district.
- (c) Sexually explicit advertisements or other promotional displays for sexually oriented businesses that are harmful to minors shall not be visible to minors from pedestrian ways, walkways or other public areas.

(Ord. 20-2010 §2; Ord. 24-2010 §1)

**Secs. 16-301—16-310. Reserved.**

## **ARTICLE XIV Marijuana Clubs**

[Sec. 16-311. Definitions.](#)

[Sec. 16-312. Prohibited.](#)

[Secs. 16-313, 16-314. Reserved.](#)

### **Sec. 16-311. Definitions.**

Marijuana club means a place not used for residential purposes where individuals gather to consume, grow or distribute or otherwise use marijuana, regardless of whether such place calls itself private or public or charges an admission, membership or similar fee. A marijuana establishment with a valid license under Article XVIII, Section 16 of the Colorado Constitution (recreational marijuana establishment) or under Article XVIII, Section 14 of the Colorado Constitution (medical marijuana establishments) and its accompanying state regulations and this Code, shall not constitute a marijuana club.

(Ord. 3 §1, 2013; Ord. 9 §6, 2013)

### **Sec. 16-312. Prohibited.**

Marijuana clubs are prohibited in all zone districts in the Town.

(Ord. 3 §1, 2013; Ord. 9 §6, 2013)

### **Secs. 16-313, 16-314. Reserved.**

ARTICLE XV Retail Marijuana Establishments Prohibited

**ARTICLE XV Retail Marijuana Establishments Prohibited**

[Sec. 16-315. Retail marijuana establishments—Prohibited.](#)

[Secs. 16-316—16-320. Reserved.](#)

**Sec. 16-315. Retail marijuana establishments—Prohibited.**

The use of property for a marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility or retail marijuana store as those operations are defined in Article XVIII, Section 16 of the Colorado Constitution is prohibited in all zone districts in the Town of Buena Vista.

(Ord. 10 § 1, 2013)

**Secs. 16-316—16-320. Reserved.**